

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 1280

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Luciano "Lucky" Varela

AN ACT

RELATING TO GOVERNMENT ORGANIZATION; CREATING THE WORKFORCE SOLUTIONS DEPARTMENT; PROVIDING POWERS AND DUTIES; PROVIDING FOR TRANSFERS; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2005; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 14 of this act may be cited as the "Workforce Solutions Department Act".

Section 2. [NEW MATERIAL] PURPOSE.--The purpose of the Workforce Solutions Department Act is to establish a single, unified department to administer all laws and exercise all functions formerly administered and exercised by the labor department and the office of workforce development.

.167549.1GR

underscoring material = new
[bracketed material] = delete

underscored material = new
[bracketed material] = delete

1 Section 3. [NEW MATERIAL] DEFINITIONS.--As used in the
2 Workforce Solutions Department Act:

3 A. "department" means the workforce solutions
4 department; and

5 B. "secretary" means the secretary of workforce
6 solutions.

7 Section 4. [NEW MATERIAL] WORKFORCE SOLUTIONS DEPARTMENT
8 CREATED.--The "workforce solutions department" is created in
9 the executive branch pursuant to the Executive Reorganization
10 Act. The department is a cabinet department that includes:

11 A. the office of the secretary;

12 B. the administrative services division;

13 C. the business services division;

14 D. the labor relations division;

15 E. the workforce technology division; and

16 F. the workforce transition services division.

17 Section 5. [NEW MATERIAL] SECRETARY OF WORKFORCE
18 SOLUTIONS--APPOINTMENT.--

19 A. The chief executive and administrative officer
20 of the department is the "secretary of workforce solutions".
21 The secretary shall be appointed by the governor with the
22 consent of the senate. The secretary shall hold office at the
23 pleasure of the governor and shall serve in the executive
24 cabinet.

25 B. A secretary who has been appointed but not yet

.167549.1GR

underscored material = new
[bracketed material] = delete

1 confirmed shall serve and have all the duties, responsibilities
2 and authority assigned by law to that office during the period
3 of time prior to the final action by the senate to confirm or
4 reject the appointment.

5 Section 6. [NEW MATERIAL] SECRETARY--GENERAL POWERS AND
6 DUTIES.--

7 A. The secretary is responsible to the governor for
8 the operation of the department. It is the secretary's duty to
9 manage all operations of the department and to administer and
10 enforce the laws with which the secretary or the department is
11 charged.

12 B. To perform the secretary's duties, the secretary
13 has every power expressly enumerated in the laws whether
14 granted to the secretary or the department or any division of
15 the department, except where authority conferred upon the human
16 rights commission is explicitly granted by Section 28-1-4 NMSA
17 1978 and except where authority conferred upon any division
18 therein is explicitly exempted from the secretary's authority
19 by statute. In accordance with these provisions, the secretary
20 shall:

21 (1) except as otherwise provided in the
22 Workforce Solutions Department Act, exercise general
23 supervisory and appointing authority over all department
24 employees, subject to any applicable personnel laws and
25 regulations;

.167549.1GR

underscored material = new
[bracketed material] = delete

1 (2) delegate authority to subordinates as the
2 secretary deems necessary and appropriate, clearly delineating
3 such delegated authority and the limitations thereto;

4 (3) organize the department into those
5 organizational units the secretary deems will enable it to
6 function most efficiently, subject to any provisions of law
7 requiring or establishing specific organizational units;

8 (4) within the limitations of available
9 appropriations and applicable laws, employ and fix the
10 compensation of those persons necessary to discharge the
11 secretary's duties;

12 (5) take administrative action by issuing
13 orders and instructions, not inconsistent with the law, to
14 ensure implementation of and compliance with the provisions of
15 law with the administration or execution of which the secretary
16 is responsible, and to enforce those orders and instructions by
17 appropriate administrative action or actions in the court;

18 (6) conduct research and studies that will
19 improve the operation of the department;

20 (7) provide courses of instruction and
21 practical training for employees of the department and other
22 persons involved in the administration of programs with the
23 objective of improving the operations and efficiency of
24 administration;

25 (8) prepare an annual budget of the

.167549.1GR

underscored material = new
[bracketed material] = delete

1 department;

2 (9) provide cooperation, at the request of
3 heads of administratively attached agencies, in order to:

4 (a) minimize or eliminate duplication of
5 services and jurisdictional conflicts;

6 (b) coordinate activities and resolve
7 problems of mutual concern; and

8 (c) resolve by agreement the manner and
9 extent to which the department shall provide budgeting, record
10 keeping and related clerical assistance to administratively
11 attached agencies, if any; and

12 (10) within budgetary limits, appoint such
13 staff as required to carry out the duties of the secretary or
14 the department.

15 C. The secretary may apply for and receive, with
16 the governor's approval, in the name of the department, any
17 public or private funds, including United States government
18 funds, available to the department to carry out its programs,
19 duties or services.

20 D. Where functions of departments overlap or a
21 function assigned to one department could better be performed
22 by another department, the secretary may recommend appropriate
23 legislation to the next session of the legislature for its
24 approval.

25 E. The secretary may make and adopt such reasonable

.167549.1GR

underscored material = new
[bracketed material] = delete

1 and procedural rules as may be necessary to carry out the
2 duties of the department and its divisions. No rule
3 promulgated by the director of any division in carrying out the
4 functions and duties of the division shall be effective until
5 approved by the secretary unless otherwise provided by statute.
6 Unless otherwise provided by statute, no rule affecting any
7 person or agency outside the department shall be adopted,
8 amended or repealed without a public hearing on the proposed
9 action before the secretary or a hearing officer designated by
10 the secretary. The public hearing shall be held in Santa Fe
11 unless otherwise permitted by statute. Notice of the subject
12 matter of the rule, the action proposed to be taken, the time
13 and place of the hearing, the manner in which interested
14 persons may present their views and the method by which copies
15 of the proposed rule, proposed amendment or repeal of an
16 existing rule may be obtained shall be published once at least
17 thirty days prior to the hearing date in a newspaper of general
18 circulation in the state and mailed at least thirty days prior
19 to the hearing date to all persons who have made a written
20 request for advance notice of hearing. All rules shall be
21 filed in accordance with the State Rules Act.

22 Section 7. [NEW MATERIAL] ADMINISTRATIVELY ATTACHED
23 AGENCIES.--The following are administratively attached to the
24 department:

25 A. the human rights commission;

.167549.1GR

underscored material = new
[bracketed material] = delete

1 B. the labor and industrial commission; and

2 C. the state workforce development board.

3 Section 8. [NEW MATERIAL] DIVISION DIRECTORS.--The
4 secretary shall appoint, with the approval of the governor,
5 directors of such divisions as are established within the
6 department. The positions so appointed are exempt from the
7 Personnel Act.

8 Section 9. [NEW MATERIAL] BUREAU--CHIEFS.--The secretary
9 shall establish within each division such bureaus as the
10 secretary deems necessary to carry out the provisions of the
11 Workforce Solutions Department Act. The secretary shall employ
12 a chief to be administrative head of each bureau.

13 Section 10. [NEW MATERIAL] PERSONNEL ACT COVERAGE.--All
14 employees and positions in the department, except for the
15 positions of secretary and division directors and other
16 positions expressly permitted to be exempt by the Personnel
17 Act, shall be covered by and shall be subject to the provisions
18 of the Personnel Act. The secretary is the appointing
19 authority.

20 Section 11. [NEW MATERIAL] COOPERATION WITH FEDERAL
21 GOVERNMENT--AUTHORITY OF SECRETARY--SINGLE STATE AGENCY
22 STATUS.--

23 A. The department is authorized to cooperate with
24 the federal government in the administration of employment,
25 training and public assistance programs under the jurisdiction

.167549.1GR

underscoring material = new
[bracketed material] = delete

1 of the department in which financial or other participation by
2 the federal government is authorized or mandated under federal
3 laws, regulations, rules or orders. The secretary may enter
4 into agreements with agencies of the federal government to
5 implement employment, training and public assistance programs
6 subject to availability of appropriated state funds and any
7 provisions of state laws applicable to such agreements or
8 participation by the state.

9 B. The governor or the secretary may designate the
10 department or any organizational unit of the department as the
11 single state agency for the administration of any employment,
12 training or public assistance program, either by the governor's
13 or the secretary's own discretion or when such designation is a
14 condition of federal financial or other participation in the
15 program under applicable federal law, regulation, rule or
16 order. No designation of a single state agency under the
17 authority granted in this section shall be made in
18 contravention of state law.

19 Section 12. [NEW MATERIAL] ADVISORY COMMITTEES.--The
20 secretary, with the consent of the governor, may create
21 advisory committees in accordance with the provisions of
22 Section 9-1-9 NMSA 1978. The secretary shall appoint the
23 members of advisory committees with the consent of the
24 governor. If the existence of an advisory committee, its
25 representational membership requirements or other matters are

.167549.1GR

underscored material = new
[bracketed material] = delete

1 required or specified under any federal law, regulation, rule
2 or order as a condition for receiving federal funds for any
3 program administered by the department, the secretary and the
4 governor shall comply with such requirements in creating the
5 advisory committee.

6 Section 13. [NEW MATERIAL] ORGANIZATIONAL UNITS OF
7 DEPARTMENT--POWERS AND DUTIES SPECIFIED BY LAW--ACCESS TO
8 INFORMATION.--Those organizational units of the department and
9 the officers of those units specified by law shall have all the
10 powers and duties enumerated in the specific laws assigned to
11 their organizational units for administration. However, the
12 carrying out of those powers and duties shall be subject to the
13 direction and supervision of the secretary, and the secretary
14 shall retain the final decision-making authority and
15 responsibility in accordance with the provisions of Subsection
16 B of Section 6 of the Workforce Solutions Department Act. The
17 department shall have access to all records, data and
18 information of other departments, agencies and institutions,
19 including its own organizational units not specifically held
20 confidential by law.

21 Section 14. [NEW MATERIAL] DISCLOSURE OF INFORMATION.--To
22 the extent permitted by federal law, upon the written request
23 of a corporation organized pursuant to the Educational
24 Assistance Act, the department shall furnish the last known
25 address and the date of that address of every person certified

.167549.1GR

underscored material = new
[bracketed material] = delete

1 to the department as being an absent obligor of an educational
2 debt that is due and owed to the corporation or that the
3 corporation has lawfully contracted to collect. The
4 corporation and its officers and employees shall use such
5 information only for the purpose of enforcing the educational
6 debt obligation of such absent obligors and shall not disclose
7 that information or use it for any other purpose.

8 Section 15. Section 7-1-8 NMSA 1978 (being Laws 1965,
9 Chapter 248, Section 13, as amended by Laws 2005, Chapter 107,
10 Section 1 and by Laws 2005, Chapter 108, Section 2 and also by
11 Laws 2005, Chapter 109, Section 2) is amended to read:

12 "7-1-8. CONFIDENTIALITY OF RETURNS AND OTHER
13 INFORMATION.--It is unlawful for an employee of the department
14 or a former employee of the department to reveal to an
15 individual other than another employee of the department
16 information contained in the return of a taxpayer made pursuant
17 to a law subject to administration and enforcement under the
18 provisions of the Tax Administration Act or any other
19 information about a taxpayer acquired as a result of the
20 employee's employment by the department and not available from
21 public sources, except:

22 A. to an authorized representative of another
23 state; provided that the receiving state has entered into a
24 written agreement with the department to use the information
25 for tax purposes only and that the receiving state has enacted

.167549.1GR

underscoring material = new
[bracketed material] = delete

1 a confidentiality statute similar to this section to which the
2 representative is subject;

3 B. to a representative of the secretary of the
4 treasury or the secretary's delegate pursuant to the terms of a
5 reciprocal agreement entered into with the federal government
6 for exchange of the information;

7 C. to the multistate tax commission or its
8 authorized representative; provided that the information is
9 used for tax purposes only and is disclosed by the multistate
10 tax commission only to states that have met the requirements of
11 Subsection A of this section;

12 D. to another jurisdiction pursuant to an
13 international fuel tax agreement; provided that the information
14 is used for tax purposes only;

15 E. to a district court, an appellate court or a
16 federal court:

17 (1) in response to an order thereof in an
18 action relating to taxes or an action for tax fraud or any
19 other crime that may affect taxes due to the state to which the
20 state is a party and in which the information sought is about a
21 taxpayer who is party to the action and is material to the
22 inquiry, in which case only that information may be required to
23 be produced in court and admitted in evidence subject to court
24 order protecting the confidentiality of the information and no
25 more;

.167549.1GR

underscoring material = new
[bracketed material] = delete

1 (2) in an action in which the department is
2 attempting to enforce an act with which the department is
3 charged or to collect a tax; or

4 (3) in any matter in which the department is a
5 party and the taxpayer has put the taxpayer's own liability for
6 taxes at issue, in which case only that information regarding
7 the taxpayer who is party to the action may be produced, but
8 this shall not prevent the disclosure of department policy or
9 interpretation of law arising from circumstances of a taxpayer
10 who is not a party;

11 F. to the taxpayer or to the taxpayer's authorized
12 representative; provided, however, that nothing in this
13 subsection shall be construed to require any employee to
14 testify in a judicial proceeding except as provided in
15 Subsection E of this section;

16 G. information obtained through the administration
17 of a law not subject to administration and enforcement under
18 the provisions of the Tax Administration Act to the extent that
19 release of that information is not otherwise prohibited by law;

20 H. in a manner, for statistical purposes, that the
21 information revealed is not identified as applicable to an
22 individual taxpayer;

23 I. with reference to information concerning the tax
24 on tobacco imposed by Sections 7-12-1 through ~~[7-12-13]~~ 7-12-12,
25 7-12-15 and 7-12-17 NMSA 1978 to a committee of the legislature

.167549.1GR

underscored material = new
[bracketed material] = delete

1 for a valid legislative purpose or to the attorney general for
2 purposes of Section 6-4-13 NMSA 1978 and the master settlement
3 agreement defined in Section 6-4-12 NMSA 1978;

4 J. to a transferee, assignee, buyer or lessor of a
5 liquor license, the amount and basis of an unpaid assessment of
6 tax for which the transferor, assignor, seller or lessee is
7 liable;

8 K. to a purchaser of a business as provided in
9 Sections 7-1-61 through 7-1-63 NMSA 1978, the amount and basis
10 of an unpaid assessment of tax for which the purchaser's seller
11 is liable;

12 L. to a municipality of this state upon its request
13 for a period specified by that municipality within the twelve
14 months preceding the request for the information by that
15 municipality:

16 (1) the names, taxpayer identification numbers
17 and addresses of registered gross receipts taxpayers reporting
18 gross receipts for that municipality under the Gross Receipts
19 and Compensating Tax Act or a local option gross receipts tax
20 imposed by that municipality. The department may also release
21 the information described in this paragraph quarterly or upon
22 such other periodic basis as the secretary and the municipality
23 may agree; and

24 (2) information indicating whether persons
25 shown on a list of businesses located within that municipality

.167549.1GR

underscoring material = new
[bracketed material] = delete

1 furnished by the municipality have reported gross receipts to
2 the department but have not reported gross receipts for that
3 municipality under the Gross Receipts and Compensating Tax Act
4 or a local option gross receipts tax imposed by that
5 municipality.

6 The employees of municipalities receiving information as
7 provided in this subsection shall be subject to the penalty
8 contained in Section 7-1-76 NMSA 1978 if that information is
9 revealed to individuals other than other employees of the
10 municipality in question or the department;

11 M. to the commissioner of public lands for use in
12 auditing that pertains to rentals, royalties, fees and other
13 payments due the state under land sale, land lease or other
14 land use contracts; the commissioner of public lands and
15 employees of the commissioner are subject to the same
16 provisions regarding confidentiality of information as
17 employees of the department;

18 N. the department shall furnish, upon request by
19 the child support enforcement division of the human services
20 department, the last known address with date of all names
21 certified to the department as being absent parents of children
22 receiving public financial assistance. The child support
23 enforcement division personnel shall use such information only
24 for the purpose of enforcing the support liability of the
25 absent parents and shall not use the information or disclose it

.167549.1GR

underscoring material = new
[bracketed material] = delete

1 for any other purpose; the child support enforcement division
2 and its employees are subject to the provisions of this section
3 with respect to any information acquired from the department;

4 ~~[N.]~~ O. the department shall furnish to the
5 information systems division of the general services
6 department, by electronic media, a database containing New
7 Mexico personal income tax filers by county, which shall be
8 updated quarterly. The database information shall be used only
9 for the purpose of producing the random jury list for the
10 selection of petit or grand jurors for the state courts
11 pursuant to Section 38-5-3 NMSA 1978. The database shall not
12 contain any financial information. If any information in the
13 database is revealed by an employee of the administrative
14 office of the courts or the information systems division to
15 individuals other than employees of the administrative office
16 of the courts, the state courts, the information systems
17 division or the department, the employee shall be subject to
18 the penalty provisions of Section 7-1-76 NMSA 1978;

19 ~~[O.]~~ P. with respect to the tax on gasoline imposed
20 by the Gasoline Tax Act, the department shall make available
21 for public inspection at monthly intervals a report covering
22 the number of gallons of gasoline and ethanol blended fuels
23 received and deducted and the amount of tax paid by each person
24 required to file a gasoline tax return or pay gasoline tax in
25 the state of New Mexico;

.167549.1GR

underscored material = new
[bracketed material] = delete

1 [~~P-~~] Q. the identity of a rack operator, importer,
2 blender, supplier or distributor and the number of gallons
3 reported on returns required under the Gasoline Tax Act,
4 Special Fuels Supplier Tax Act or Alternative Fuel Tax Act to a
5 rack operator, importer, blender, distributor or supplier, but
6 only when it is necessary to enable the department to carry out
7 its duties under the Gasoline Tax Act, the Special Fuels
8 Supplier Tax Act or the Alternative Fuel Tax Act;

9 [~~Q-~~] R. the department shall release upon request
10 only the names and addresses of all gasoline or special fuel
11 distributors, wholesalers and retailers to the New Mexico
12 department of agriculture, the employees of which are thereby
13 subject to the penalty contained in Section 7-1-76 NMSA 1978 if
14 that information is revealed to individuals other than
15 employees of either the New Mexico department of agriculture or
16 the department;

17 [~~R-~~] S. the department shall answer all inquiries
18 concerning whether a person is or is not a registered taxpayer
19 for tax programs that require registration, but nothing in this
20 [~~section~~] subsection shall be construed to allow the department
21 to answer inquiries concerning whether a person has filed a tax
22 return;

23 [~~S-~~] T. upon request of a municipality or county of
24 this state, the department shall permit officials or employees
25 of the municipality or county to inspect the records of the

.167549.1GR

underscored material = new
[bracketed material] = delete

1 department pertaining to an increase or decrease to a
2 distribution or transfer made pursuant to Section 7-1-6.15 NMSA
3 1978 for the purpose of reviewing the basis for the increase or
4 decrease. The municipal or county officials or employees
5 receiving information provided in this subsection shall not
6 reveal that information to any person other than another
7 employee of the municipality or the county, the department or a
8 district court, an appellate court or a federal court in a
9 proceeding relating to a disputed distribution and in which
10 both the state and the municipality or county are parties.
11 Information provided pursuant to provisions of this subsection
12 that is revealed other than as provided in this subsection
13 shall subject the person revealing the information to the
14 penalty contained in Section 7-1-76 NMSA 1978;

15 ~~[F.]~~ U. to a county of this state that has in
16 effect a local option gross receipts tax imposed by the county
17 upon its request for a period specified by that county within
18 the twelve months preceding the request for the information by
19 that county:

20 (1) the names, taxpayer identification numbers
21 and addresses of registered gross receipts taxpayers reporting
22 gross receipts either for that county in the case of a local
23 option gross receipts tax imposed on a countywide basis or only
24 for the areas of that county outside of any incorporated
25 municipalities within that county in the case of a county local

.167549.1GR

underscoring material = new
[bracketed material] = delete

1 option gross receipts tax imposed only in areas of the county
2 outside of any incorporated municipalities. The department may
3 also release the information described in this paragraph
4 quarterly or upon such other periodic basis as the secretary
5 and the county may agree;

6 (2) in the case of a local option gross
7 receipts tax imposed by a county on a countywide basis,
8 information indicating whether persons shown on a list of
9 businesses located within the county furnished by the county
10 have reported gross receipts to the department but have not
11 reported gross receipts for that county under the Gross
12 Receipts and Compensating Tax Act or a local option gross
13 receipts tax imposed by that county on a countywide basis; and

14 (3) in the case of a local option gross
15 receipts tax imposed by a county only on persons engaging in
16 business in that area of the county outside of incorporated
17 municipalities, information indicating whether persons on a
18 list of businesses located in that county outside of the
19 incorporated municipalities but within that county furnished by
20 the county have reported gross receipts to the department but
21 have not reported gross receipts for that county outside of the
22 incorporated municipalities within that county under the Gross
23 Receipts and Compensating Tax Act or a local option gross
24 receipts tax imposed by the county only on persons engaging in
25 business in that county outside of the incorporated

.167549.1GR

underscored material = new
[bracketed material] = delete

1 municipalities.

2 The officers and employees of counties receiving
3 information as provided in this subsection shall be subject to
4 the penalty contained in Section 7-1-76 NMSA 1978 if the
5 information is revealed to individuals other than other
6 officers or employees of the county in question or the
7 department;

8 ~~[U.]~~ V. to authorized representatives of an Indian
9 nation, tribe or pueblo, the territory of which is located
10 wholly or partially within New Mexico, pursuant to the terms of
11 a reciprocal agreement entered into with the Indian nation,
12 tribe or pueblo for the exchange of that information for tax
13 purposes only; provided that the Indian nation, tribe or pueblo
14 has enacted a confidentiality statute similar to this section;

15 ~~[V.]~~ W. information with respect to the taxes or
16 tax acts administered pursuant to Subsection B of Section 7-1-2
17 NMSA 1978, except that:

18 (1) information for or relating to a period
19 prior to July 1, 1985 with respect to Sections 7-25-1 through
20 7-25-9 and 7-26-1 through 7-26-8 NMSA 1978 may be released only
21 to a committee of the legislature for a valid legislative
22 purpose;

23 (2) except as provided in Paragraph (3) of
24 this subsection, contracts and other agreements between the
25 taxpayer and other parties and the proprietary information

.167549.1GR

underscored material = new
[bracketed material] = delete

1 contained in those contracts and agreements shall not be
2 released without the consent of all parties to the contract or
3 agreement; and

4 (3) audit workpapers and the proprietary
5 information contained in the workpapers shall not be released
6 except to:

7 (a) the minerals management service of
8 the United States department of the interior, if production
9 occurred on federal land;

10 (b) a person having a legal interest in
11 the property that is subject to the audit;

12 (c) a purchaser of products severed from
13 a property subject to the audit; or

14 (d) the authorized representative of any
15 of the persons in Subparagraphs (a) through (c) of this
16 paragraph. This paragraph does not prohibit the release of
17 proprietary information contained in the workpapers that is
18 also available from returns or from other sources not subject
19 to the provisions of this section;

20 [~~W.~~] X. information with respect to the taxes,
21 surtaxes, advance payments or tax acts administered pursuant to
22 Subsection C of Section 7-1-2 NMSA 1978;

23 [~~X.~~] Y. to the public regulation commission,
24 information with respect to the Corporate Income and Franchise
25 Tax Act required to enable the commission to carry out its

.167549.1GR

underscoring material = new
[bracketed material] = delete

1 duties;

2 [~~Y.~~] Z. to the state racing commission, information
3 with respect to the state, municipal and county gross receipts
4 taxes paid by racetracks;

5 [~~Z.~~] AA. upon request of a corporation authorized
6 to be formed under the Educational Assistance Act, the
7 department shall furnish the last known address and the date of
8 that address of every person certified to the department as an
9 absent obligor of an educational debt due and owed to the
10 corporation or that the corporation has lawfully contracted to
11 collect. The corporation and its officers and employees shall
12 use that information only to enforce the educational debt
13 obligation of the absent obligors and shall not disclose that
14 information or use it for any other purpose;

15 [~~AA.~~] BB. a decision and order made by a hearing
16 officer pursuant to Section 7-1-24 NMSA 1978 with respect to a
17 protest filed with the secretary on or after July 1, 1993;

18 [~~BB.~~] CC. information required by a provision of
19 the Tax Administration Act to be made available to the public
20 by the department;

21 [~~CC.~~] DD. upon request by the Bernalillo county
22 metropolitan court, the department shall furnish the last known
23 address and the date of that address for every person the court
24 certifies to the department as a person who owes fines, fees or
25 costs to the court or who has failed to appear pursuant to a

.167549.1GR

underscored material = new
[bracketed material] = delete

1 court order or a promise to appear;

2 [DD-] EE. upon request by a magistrate court, the
3 department shall furnish the last known address and the date of
4 that address for every person the court certifies to the
5 department as a person who owes fines, fees or costs to the
6 court or who has failed to appear pursuant to a court order or
7 a promise to appear;

8 [EE-] FF. to the national tax administration
9 agencies of Mexico and Canada; provided the agency receiving
10 the information has entered into a written agreement with the
11 department to use the information for tax purposes only and is
12 subject to a confidentiality statute similar to this section;

13 [FF-] GG. to a district attorney, a state district
14 court grand jury or federal grand jury for an investigation of
15 or proceeding related to an alleged criminal violation of the
16 tax laws;

17 [GG-] HH. to a third party subject to a subpoena or
18 levy issued pursuant to the provisions of the Tax
19 Administration Act, the identity of the taxpayer involved, the
20 taxes or tax acts involved and the nature of the proceeding;

21 [HH-] II. to the gaming control board, tax returns
22 of license applicants and their affiliates as provided in
23 Subsection E of Section 60-2E-14 NMSA 1978; [and

24 H-] JJ. any written ruling on questions of
25 evidence or procedure made by a hearing officer pursuant to

.167549.1GR

underscoring material = new
[bracketed material] = delete

1 Section 7-1-24 NMSA 1978; provided that the name and
2 identification number of the taxpayer requesting the ruling
3 shall not be [~~provided~~] disclosed;

4 [~~HH-~~] KK. to representatives of the workers'
5 compensation administration, authorized by the director of the
6 workers' compensation administration for this purpose, to
7 facilitate the identification of taxpayers that are delinquent
8 or noncompliant in payment of fees required by Section 52-1-9.1
9 or 52-5-19 NMSA 1978;

10 [~~JJ-~~] LL. to the secretary of [~~labor~~] workforce
11 solutions or the secretary's delegate for use in enforcement of
12 unemployment insurance collections pursuant to the terms of a
13 reciprocal agreement entered into with the secretary of [~~labor~~]
14 workforce solutions for exchange of information; the secretary
15 of [~~labor~~] workforce solutions and employees of the [~~labor~~]
16 workforce solutions department are subject to the provisions
17 regarding confidentiality of information contained in the Tax
18 Administration Act; and

19 [~~KK-~~] MM. information that the department is
20 authorized by the Tax Administration Act to release to a local
21 body that licenses professions or occupations pursuant to
22 Chapter 36, Article 2 NMSA 1978 or Chapter 61 NMSA 1978."

23 Section 16. Section 7-2-18.5 NMSA 1978 (being Laws 1998,
24 Chapter 97, Section 2) is amended to read:

25 "7-2-18.5. WELFARE-TO-WORK TAX CREDIT.--

.167549.1GR

underscored material = new
[bracketed material] = delete

1 A. Any taxpayer who files an individual New Mexico
2 income tax return and is not a dependent of another taxpayer
3 and is entitled to claim the federal welfare-to-work credit
4 provided by 26 U.S.C. Section 51A with respect to a state-
5 qualified employee in a state-qualified job may take a tax
6 credit equal to fifty percent of the amount of the welfare-to-
7 work credit claimed and allowed under 26 U.S.C. Section 51A
8 with respect to that employee in that job.

9 B. To be eligible for the credit provided by this
10 section, a taxpayer must be in compliance with the following
11 provisions:

12 (1) the hiring of any state-qualified employee
13 shall not result in the displacement of any currently employed
14 worker or position, including partial displacement such as a
15 reduction in the hours of nonovertime work, wages or employment
16 benefits, or in any infringement of the promotional
17 opportunities of any currently employed individual;

18 (2) the hiring of any state-qualified employee
19 shall not impair existing contracts for services or collective
20 bargaining agreements, and no employment under the terms of
21 this ~~[act]~~ section shall be inconsistent with the terms of a
22 collective bargaining agreement or involve the performance of
23 duties covered under a collective bargaining agreement unless
24 the employer and the labor organization concur in writing;

25 (3) a state-qualified employee may fill or

underscored material = new
[bracketed material] = delete

1 perform the duties of an employment position only in a manner
2 that is consistent with existing laws, personnel procedures and
3 collective bargaining contracts;

4 (4) no state-qualified employee shall be
5 employed or assigned:

6 (a) when any other individual is on
7 layoff from the same or any substantially equivalent job;

8 (b) if the employer has terminated the
9 employment of any regular employee or otherwise caused an
10 involuntary reduction of its workforce with the effect of
11 filling the vacancy so created with a state-qualified employee;
12 or

13 (c) to any position at a particular work
14 site when there is an ongoing strike or lockout at that
15 particular work site;

16 (5) state-qualified employees shall be paid a
17 wage that is substantially like the wage paid for similar jobs
18 with the employer with appropriate adjustments for experience
19 and training but not less than the federal minimum hourly wage;
20 and

21 (6) employers shall:

22 (a) maintain health, safety and working
23 conditions not less than those of comparable jobs offered by
24 the employer; and

25 (b) maintain standard and customary

underscored material = new
[bracketed material] = delete

1 entry-level wages and benefits and apply historical and normal
2 increases in wages and benefits appropriate for experience and
3 training of the state-qualified employee.

4 C. For the purposes of this section:

5 (1) "high-unemployment county" means a county
6 in which the unemployment rate as reported by the [~~labor~~
7 workforce solutions department exceeds ten percent in six or
8 more months of the calendar year preceding the year for which
9 the tax credit provided by this section is claimed;

10 (2) "state-qualified employee" means a "long-
11 term family assistance recipient", as that term is defined in
12 26 U.S.C. Section 51A(c), who resides in a high-unemployment
13 county during the period of employment for which the welfare-
14 to-work credit provided by 26 U.S.C. Section 51A applies with
15 respect to that employee; and

16 (3) "state-qualified job" means a job
17 established by the taxpayer that:

18 (a) when first occupied by a state-
19 qualified employee results in the total number of the
20 taxpayer's employees exceeding the average number of the
21 taxpayer's employees during the taxpayer's preceding tax year;
22 or

23 (b) was a position previously filled by
24 a state-qualified employee and was vacant prior to the hiring
25 of the new state-qualified employee in that position.

.167549.1GR

underscoring material = new
[bracketed material] = delete

1 D. The [~~labor~~] workforce solutions department shall
2 determine whether the employee is a state-qualified employee
3 and whether the job is a state-qualified job and, if the
4 employee is a state-qualified employee and the job is a state-
5 qualified job, certify that fact to the employer. The taxpayer
6 claiming the tax credit provided by this section shall provide
7 a copy of the certification with respect to each employee for
8 which the tax credit is claimed.

9 E. By July 1, 1998 and by January 31 of each
10 subsequent year, the [~~labor~~] workforce solutions department
11 shall certify to the taxation and revenue department the high-
12 unemployment counties for the preceding calendar year.

13 F. A husband and wife who file separate returns for
14 a taxable year in which they could have filed a joint return
15 may each claim only one-half of the tax credit provided by this
16 section that would have been allowed on a joint return.

17 G. A taxpayer who otherwise qualifies may claim
18 [~~his~~] the taxpayer's pro rata share of the tax credit provided
19 by this section with respect to state-qualified employees
20 employed by a partnership or other business association of
21 which the taxpayer is a member. The total tax credit claimed
22 by all members of the partnership or association shall not
23 exceed the amount of tax credit provided pursuant to Subsection
24 A of this section with respect to each state-qualified employee
25 for which the credit is allowed.

.167549.1GR

underscoring material = new
[bracketed material] = delete

1 H. The tax credit provided by this section may only
2 be deducted from the taxpayer's income tax liability. Any
3 portion of the tax credit provided by this section that remains
4 unused at the end of the taxpayer's taxable year may be carried
5 forward for three consecutive taxable years."

6 Section 17. Section 7-2A-8.8 NMSA 1978 (being Laws 1998,
7 Chapter 97, Section 3) is amended to read:

8 "7-2A-8.8. WELFARE-TO-WORK TAX CREDIT.--

9 A. Any taxpayer [~~who~~] that files a New Mexico
10 corporate income tax return and [~~who~~] that is entitled to claim
11 the federal welfare-to-work credit provided by 26 U.S.C.
12 Section 51A with respect to a state-qualified employee in a
13 state-qualified job may take against the taxpayer's corporate
14 income tax liability a tax credit equal to fifty percent of the
15 amount of the welfare-to-work credit claimed and allowed under
16 26 U.S.C. Section 51A with respect to that employee in that
17 job.

18 B. To be eligible for the credit provided by this
19 section, a taxpayer must be in compliance with the following
20 provisions:

21 (1) the hiring of any state-qualified employee
22 shall not result in the displacement of any currently employed
23 worker or position, including partial displacement such as a
24 reduction in the hours of nonovertime work, wages or employment
25 benefits, or in any infringement of the promotional

.167549.1GR

underscored material = new
[bracketed material] = delete

1 opportunities of any currently employed individual;

2 (2) the hiring of any state-qualified employee
3 shall not impair existing contracts for services or collective
4 bargaining agreements, and no employment under the terms of
5 this ~~[act]~~ section shall be inconsistent with the terms of a
6 collective bargaining agreement or involve the performance of
7 duties covered under a collective bargaining agreement unless
8 the employer and the labor organization concur in writing;

9 (3) a state-qualified employee may fill or
10 perform the duties of an employment position only in a manner
11 that is consistent with existing laws, personnel procedures and
12 collective bargaining contracts;

13 (4) no state-qualified employee shall be
14 employed or assigned:

15 (a) when any other individual is on
16 layoff from the same or any substantially equivalent job;

17 (b) if the employer has terminated the
18 employment of any regular employee or otherwise caused an
19 involuntary reduction of its workforce with the effect of
20 filling the vacancy so created with a state-qualified employee;
21 or

22 (c) to any position at a particular work
23 site when there is an ongoing strike or lockout at that
24 particular work site;

25 (5) state-qualified employees shall be paid a

.167549.1GR

underscored material = new
[bracketed material] = delete

1 wage that is substantially like the wage paid for similar jobs
2 with the employer with appropriate adjustments for experience
3 and training but not less than the federal minimum hourly wage;
4 and

5 (6) employers shall:

6 (a) maintain health, safety and working
7 conditions not less than those of comparable jobs offered by
8 the employer; and

9 (b) maintain standard and customary
10 entry-level wages and benefits and apply historical and normal
11 increases in wages and benefits appropriate for experience and
12 training of the state-qualified employee.

13 C. For the purposes of this section:

14 (1) "high-unemployment county" means a county
15 in which the unemployment rate as reported by the [~~labor~~]
16 workforce solutions department exceeds ten percent in six or
17 more months of the calendar year preceding the year for which
18 the tax credit provided by this section is claimed;

19 (2) "state-qualified employee" means a "long-
20 term family assistance recipient", as that term is defined in
21 26 U.S.C. Section 51A(c), who resides in a high-unemployment
22 county during the period of employment for which the welfare-
23 to-work credit provided by 26 U.S.C. Section 51A applies with
24 respect to that employee; and

25 (3) "state-qualified job" means a job

underscoring material = new
[bracketed material] = delete

1 established by the taxpayer that:

2 (a) when first occupied by a state-
3 qualified employee results in the total number of the
4 taxpayer's employees exceeding the average number of the
5 taxpayer's employees during the taxpayer's preceding tax year;
6 or

7 (b) was a position previously filled by
8 a state-qualified employee and was vacant prior to the hiring
9 of the new state-qualified employee in that position.

10 D. The [~~labor~~] workforce solutions department shall
11 determine whether the employee is a state-qualified employee
12 and whether the job is a state-qualified job and, if the
13 employee is a state-qualified employee and the job is a state-
14 qualified job, certify that fact to the employer. The taxpayer
15 claiming the tax credit provided by this section shall provide
16 a copy of the certification with respect to each employee for
17 which the tax credit is claimed.

18 E. By July 1, 1998 and by January 31 of each
19 subsequent year, the [~~labor~~] workforce solutions department
20 shall certify to the taxation and revenue department the high-
21 unemployment counties for the preceding calendar year.

22 F. The tax credit provided in this section may only
23 be deducted from the taxpayer's corporate income tax liability.
24 Any portion of the tax credit provided by this section that
25 remains unused at the end of the taxpayer's taxable year may be

.167549.1GR

underscored material = new
[bracketed material] = delete

1 carried forward for three consecutive taxable years."

2 Section 18. Section 7-2C-3 NMSA 1978 (being Laws 1985,
3 Chapter 106, Section 3, as amended by Laws 2006, Chapter 52,
4 Section 2 and by Laws 2006, Chapter 53, Section 2) is amended
5 to read:

6 "7-2C-3. DEFINITIONS.--As used in the Tax Refund
7 Intercept Program Act:

8 A. "claimant agency" means the taxation and revenue
9 department or any of its divisions, the human services
10 department, the [~~employment security division of the labor~~]
11 workforce transition services division of the workforce
12 solutions department, the workers' compensation administration,
13 any corporation authorized to be formed under the Educational
14 Assistance Act, a district, magistrate or municipal court or
15 the Bernalillo county metropolitan court;

16 B. "debt" means a legally enforceable obligation of
17 an employer subject to the Unemployment Compensation Law, the
18 Workers' Compensation Act and the Workers' Compensation
19 Administration Act, or an individual to pay a liquidated amount
20 of money that:

21 (1) is equal to or more than one hundred
22 dollars (\$100);

23 (2) is due and owing a claimant agency, which
24 a claimant agency is obligated by law to collect or which, in
25 the case of an educational loan, a claimant agency has lawfully

.167549.1GR

underscored material = new
[bracketed material] = delete

1 contracted to collect;

2 (3) has accrued through contract, tort,
3 subrogation or operation of law; and

4 (4) either:

5 (a) has been secured by a warrant of
6 levy and lien for amounts due under the Unemployment
7 Compensation Law or workers' compensation fees due under the
8 Workers' Compensation Administration Act; or

9 (b) has been reduced to judgment for all
10 other cases;

11 C. "debtor" means any employer subject to the
12 Unemployment Compensation Law, the Workers' Compensation Act
13 and the Workers' Compensation Administration Act, or any
14 individual owing a debt;

15 D. "department" or "division" means, unless the
16 context indicates otherwise, the taxation and revenue
17 department, the secretary of taxation and revenue or any
18 employee of the department exercising authority lawfully
19 delegated to that employee by the secretary;

20 E. "educational loan" means any loan for
21 educational purposes owned by a public post-secondary
22 educational institution or owned or guaranteed by any
23 corporation authorized to be formed under the Educational
24 Assistance Act;

25 F. "medical support" means amounts owed to the

.167549.1GR

underscored material = new
[bracketed material] = delete

1 human services department pursuant to the provisions of
2 Subsection B of Section 40-4C-12 NMSA 1978;

3 G. "public post-secondary educational institution"
4 means a publicly owned or operated institution of higher
5 education or other publicly owned or operated post-secondary
6 educational facility located within New Mexico;

7 H. "spouse" means an individual who is or was a
8 spouse of the debtor and who has joined with the debtor in
9 filing a joint return of income tax pursuant to the provisions
10 of the Income Tax Act, which joint return has given rise to a
11 refund that may be subject to the provisions of the Tax Refund
12 Intercept Program Act; and

13 I. "refund" means a refund, including any amount of
14 tax rebates or credits, under the Income Tax Act or the
15 Corporate Income and Franchise Tax Act that the department has
16 determined to be due to an individual or corporation."

17 Section 19. Section 7-2C-11 NMSA 1978 (being Laws 1985,
18 Chapter 106, Section 11, as amended by Laws 2006, Chapter 52,
19 Section 4 and by Laws 2006, Chapter 53, Section 4) is amended
20 to read:

21 "7-2C-11. PRIORITY OF CLAIMS.--

22 A. Claims of the department take precedence over
23 the claim of any competing claimant agency, whether the
24 department asserts a claim or sets off an asserted debt under
25 the provisions of the Tax Refund Intercept Program Act or under

.167549.1GR

underscored material = new
[bracketed material] = delete

1 the provisions of any other law that authorizes the department
2 to apply amounts of tax owed against any refund due an
3 individual pursuant to the Income Tax Act.

4 B. After claims of the department, claims shall
5 take priority in the following order before claims of any
6 competing claimant agency:

7 (1) claims of the human services department
8 resulting from child support enforcement liabilities;

9 (2) claims of the human services department
10 resulting from medical support liabilities;

11 (3) claims resulting from educational loans
12 made under the Educational Assistance Act;

13 (4) claims of the human services department
14 resulting from [AFDC] temporary assistance for needy families
15 liabilities;

16 (5) claims of the human services department
17 resulting from food stamp liabilities;

18 (6) claims of the [~~employment security~~
19 ~~division of the labor~~] workforce transition services division
20 of the workforce solutions department arising under the
21 Unemployment Compensation Law;

22 (7) claims of a district court for fines, fees
23 or costs owed to that court;

24 (8) claims of a magistrate court for fines,
25 fees or costs owed to that court;

.167549.1GR

underscoring material = new
[bracketed material] = delete

1 (9) claims of the Bernalillo county
2 metropolitan court for fines, fees or costs owed to that court;

3 (10) claims of a municipal court for fines,
4 fees or costs owed to that court; and

5 (11) claims of the workers' compensation
6 administration arising under the Workers' Compensation Act or
7 the Workers' Compensation Administration Act."

8 Section 20. Section 13-4-2 NMSA 1978 (being Laws 1984,
9 Chapter 66, Section 2, as amended) is amended to read:

10 "13-4-2. RESIDENT CONTRACTOR DEFINED--APPLICATION OF
11 PREFERENCE.--

12 A. "Resident contractor" means a New Mexico
13 resident contractor or a New York state business enterprise.

14 B. "New Mexico resident contractor" means any
15 person, firm, corporation or other legal entity if, at the time
16 the contract is advertised for bids and at the time bids are
17 opened, it has all required licenses and meets the following
18 requirements:

19 (1) if the bidder is a corporation, it shall
20 be incorporated in New Mexico and maintain its principal office
21 and place of business in New Mexico;

22 (2) if the bidder is a partnership, general or
23 limited, or other legal entity, it shall maintain its principal
24 office and place of business in New Mexico;

25 (3) if the bidder is an individual, ~~he~~ the

underscored material = new
[bracketed material] = delete

1 person shall maintain [~~his~~] the principal office and place of
2 the business in New Mexico; or

3 (4) if a bidder who is a telecommunications
4 company as defined by Subsection M of Section 63-9A-3 NMSA 1978
5 or an affiliate of a telecommunications company has paid
6 unemployment compensation to the [~~employment security~~]
7 workforce transition services division of the [~~labor~~] workforce
8 solutions department at the applicable experience rate for that
9 employer pursuant to the Unemployment Compensation Law on no
10 fewer than ten employees who have performed services subject to
11 contributions for the two-year period prior to issuance of
12 notice to bid, the bidder will be considered to have fulfilled
13 the requirements of Paragraph (1), (2) or (3) of this
14 subsection. A successor to a previously qualified New Mexico
15 contractor or resident contractor, where the creation of the
16 bidder resulted from a court order, is entitled to credit for
17 qualifying contributions paid by the previously qualified New
18 Mexico contractor or resident contractor.

19 C. "New York state business enterprise" means a
20 business enterprise, including a sole proprietorship,
21 partnership or corporation, that offers for sale or lease or
22 other form of exchange, goods or commodities that are
23 substantially manufactured, produced or assembled in New York
24 state, or services, other than construction services, that are
25 substantially performed within New York state. For purposes of

.167549.1GR

underscored material = new
[bracketed material] = delete

1 construction services, a New York state business enterprise
2 means a business enterprise, including a sole proprietorship,
3 partnership or corporation, that has its principal place of
4 business in New York state.

5 D. For purposes of this section, "affiliate" means
6 an entity that directly or indirectly through one or more
7 intermediaries controls, is controlled by or is under common
8 control with a telecommunications company through ownership of
9 voting securities representing a majority of the total voting
10 power of that entity.

11 E. When bids are received only from nonresident
12 contractors and resident contractors and the lowest responsible
13 bid is from a nonresident contractor, the contract shall be
14 awarded to the resident contractor whose bid is nearest to the
15 bid price of the otherwise low nonresident contractor if the
16 bid price of the resident contractor is made lower than the bid
17 price of the nonresident contractor when multiplied by a factor
18 of .95.

19 F. No contractor shall be treated as a resident
20 contractor in the awarding of public works contracts by a state
21 agency or a local public body unless the contractor has
22 qualified with the state purchasing agent as a resident
23 contractor pursuant to this section by making application to
24 the state purchasing agent and receiving from ~~him~~ the state
25 purchasing agent a certification number. The procedure for

.167549.1GR

underscored material = new
[bracketed material] = delete

1 application and certification is as follows:

2 (1) the state purchasing agent shall prepare
3 an application form for certification as a resident contractor,
4 requiring such information and proof as [~~he deems~~] necessary to
5 qualify the applicant under the terms of this section;

6 (2) the contractor seeking to qualify as a
7 resident contractor shall complete the application form and
8 submit it to the state purchasing agent prior to the submission
9 of a bid on which the contractor desires to be given a
10 preference;

11 (3) the state purchasing agent shall examine
12 the application and if necessary may seek additional
13 information or proof so as to be assured that the prospective
14 contractor is indeed entitled to certification as a resident
15 contractor. If the application is in proper form, the state
16 purchasing agent shall issue the contractor a distinctive
17 certification number [~~which~~] that is valid until revoked and
18 [~~which~~] when used on bids and other purchasing documents for
19 state agencies or local public bodies, entitles the contractor
20 to treatment as a resident contractor under Subsection E of
21 this section; and

22 (4) the certification number issued pursuant
23 to Paragraph (3) of this subsection shall be revoked by the
24 state purchasing agent upon making a determination that the
25 contractor no longer meets the requirements of a resident

.167549.1GR

underscored material = new
[bracketed material] = delete

1 contractor as defined in this section."

2 Section 21. Section 13-4-11 NMSA 1978 (being Laws 1965,
3 Chapter 35, Section 1, as amended) is amended to read:

4 "13-4-11. MINIMUM WAGES ON PUBLIC WORKS--WEEKLY PAYMENT--
5 POSTING WAGE SCALE--WITHHOLDING FUNDS.--

6 A. Every contract or project in excess of sixty
7 thousand dollars (\$60,000) that the state or any political
8 subdivision thereof is a party to for construction, alteration,
9 demolition or repair or any combination of these, including
10 painting and decorating, of public buildings, public works or
11 public roads of the state and that requires or involves the
12 employment of mechanics, laborers or both shall contain a
13 provision stating the minimum wages to be paid to various
14 classes of laborers and mechanics, which shall be based upon
15 the wages that will be determined by the [~~director of the~~]
16 labor [~~and industrial~~] relations division of the [~~labor~~]
17 workforce solutions department to be prevailing for the
18 corresponding classes of laborers and mechanics employed on
19 contract work of a similar nature in the state or locality, and
20 every contract or project shall contain a stipulation that the
21 contractor, subcontractor, employer or a person acting as a
22 contractor shall pay all mechanics and laborers employed on the
23 site of the project, unconditionally and not less often than
24 once a week and without subsequent unlawful deduction or rebate
25 on any account, the full amounts accrued at time of payment

.167549.1GR

underscoring material = new
[bracketed material] = delete

1 computed at wage rates not less than those stated in the
2 minimum wage rates issued for the project.

3 B. For the purpose of making wage determinations,
4 the [~~director of the~~] labor [~~and industrial~~] relations division
5 [~~of the labor department~~] shall conduct a continuing program
6 for the obtaining and compiling of wage-rate information and
7 shall encourage the voluntary submission of wage-rate data by
8 contractors, contractors' associations, labor organizations,
9 interested persons and public officers. Before making a
10 determination of wage rates for any project, the [~~director~~]
11 division shall give due regard to the information thus
12 obtained. Whenever the [~~director~~] division deems that the data
13 at hand are insufficient to make a wage determination, the
14 [~~director~~] division may have a field survey conducted for the
15 purpose of obtaining sufficient information upon which to make
16 determination of wage rates. Any interested person shall have
17 the right to submit to the [~~director~~] division written data,
18 views and arguments why the wage determination should be
19 changed.

20 C. The scale of wages to be paid shall be posted by
21 the contractor or person acting as a contractor in a prominent
22 and easily accessible place at the site of the work; and it is
23 further provided that there may be withheld from the
24 contractor, subcontractor, employer or a person acting as a
25 contractor so much of accrued payments as may be considered

.167549.1GR

underscored material = new
[bracketed material] = delete

1 necessary by the contracting officer of the state or political
2 subdivision to pay to laborers and mechanics employed on the
3 project the difference between the rates of wages required by
4 the ~~[director of the]~~ labor ~~[and industrial]~~ relations division
5 ~~[of the labor department]~~ to be paid to laborers and mechanics
6 on the work and the rates of wages received by such laborers
7 and mechanics and not refunded to the contractor,
8 subcontractor, employer or a person acting as a contractor or
9 their agents.

10 D. Notwithstanding any other provision of law
11 applicable to public works contracts or agreements, ~~[the~~
12 ~~director of]~~ the labor ~~[and industrial]~~ relations division ~~[of~~
13 ~~the labor department]~~ may, with cause:

14 (1) issue investigative or hearing subpoenas
15 for the production of documents or witnesses pertaining to
16 public works prevailing wage projects; and

17 (2) attach and prohibit the release of any
18 assurance of payment required under Section 13-4-18 NMSA 1978
19 for a reasonable period of time beyond the time limits
20 specified in that section until the ~~[director]~~ division
21 satisfactorily resolves any probable cause to believe a
22 violation of the Public Works Minimum Wage Act or its
23 implementing rules has taken place.

24 E. ~~[The director of]~~ The labor ~~[and industrial]~~
25 relations division ~~[of the labor department]~~ shall issue rules

.167549.1GR

underscored material = new
[bracketed material] = delete

1 necessary to administer and accomplish the purposes of the
2 Public Works Minimum Wage Act."

3 Section 22. Section 13-4-12 NMSA 1978 (being Laws 1965,
4 Chapter 35, Section 2, as amended) is amended to read:

5 "13-4-12. DEFINITION OF THE TERM "WAGES".--

6 A. As used in Section 13-4-11 NMSA 1978, "wages",
7 "scale of wages", "wage rates", "minimum wages" and "prevailing
8 wages" include:

9 (1) the basic hourly rate of pay; and

10 (2) the amount of:

11 (a) the rate of contribution irrevocably
12 made by a contractor, subcontractor, employer or any person
13 acting as a contractor to a trustee or a third person pursuant
14 to a fund, plan or program; and

15 (b) the rate of costs to a contractor,
16 subcontractor, employer or a person acting as a contractor that
17 reasonably may be anticipated in providing benefits to laborers
18 and mechanics pursuant to an enforceable commitment to carry
19 out a financially responsible plan or program that was
20 communicated in writing to the laborers and mechanics affected
21 for: 1) medical or hospital care; 2) pensions on retirement or
22 death; 3) compensation for injuries or illness resulting from
23 occupational activity; or 4) insurance to provide for any of
24 the foregoing; and for: 5) unemployment benefits; 6) life
25 insurance; 7) disability and sickness insurance; 8) accident

.167549.1GR

underscored material = new
[bracketed material] = delete

1 insurance; 9) vacation and holiday pay; 10) costs of
2 apprenticeship or other similar programs; or for 11) other bona
3 fide fringe benefits; but only where the contractor,
4 subcontractor, employer or a person acting as a contractor is
5 not required by other federal, state or local law to provide
6 any of the foregoing or similar benefits.

7 B. The obligation of a contractor, subcontractor,
8 employer or person acting as a contractor to make payment in
9 accordance with the prevailing wage determinations of [~~the~~
10 ~~director of~~] the labor [~~and industrial~~] relations division of
11 the [~~labor~~] workforce solutions department, insofar as Section
12 13-4-11 NMSA 1978 or other sections of legislative acts
13 incorporating Section 13-4-11 NMSA 1978 are concerned, may be
14 discharged by the making of payments consistent with Subsection
15 B of Section 50-4-2 NMSA 1978, except that the frequency of
16 payments shall comply with Subsection A of Section 13-4-11 NMSA
17 1978. The payments shall include:

18 (1) payment of the base wage rate as the
19 [~~director of the~~] labor [~~and industrial~~] relations division [~~of~~
20 ~~the labor department~~] has determined to be prevailing for the
21 appropriate class of laborers or mechanics; and

22 (2) the making of contributions of a type
23 referred to in Subparagraph (a) of Paragraph (2) of Subsection
24 A of this section; or

25 (3) the assumption of an enforceable

.167549.1GR

underscored material = new
[bracketed material] = delete

1 commitment to bear the costs of a plan or program of a type
2 referred to in Subparagraph (b) of Paragraph (2) of Subsection
3 A of this section; or

4 (4) any combination of Paragraphs (2) and (3)
5 of this subsection where the aggregate of any payments or
6 contributions and costs therefor is not less than the rate of
7 pay described in Section 13-4-11 NMSA 1978 plus the amount
8 referred to in this section.

9 C. The provisions of this section shall not affect
10 existing contracts or contracts resulting from bids outstanding
11 on July 15, 1965."

12 Section 23. Section 13-4-13 NMSA 1978 (being Laws 1965,
13 Chapter 35, Section 3, as amended) is amended to read:

14 "13-4-13. FAILURE TO PAY MINIMUM WAGE--TERMINATION OF
15 CONTRACT.--Every contract within the scope of the Public Works
16 Minimum Wage Act shall contain further provision that in the
17 event it is found by [~~the director of~~] the labor [~~and~~
18 ~~industrial~~] relations division of the [~~labor~~] workforce
19 solutions department that any laborer or mechanic employed on
20 the site of the project has been or is being paid as a result
21 of a willful violation a rate of wages less than the rate of
22 wages required, the contracting agency may, by written notice
23 to the contractor, subcontractor, employer or person acting as
24 a contractor, terminate [~~their~~] the right to proceed with the
25 work or such part of the work as to which there has been a

.167549.1GR

underscored material = new
[bracketed material] = delete

1 willful failure to pay the required wages, and the contracting
2 agency may prosecute the work to completion by contract or
3 otherwise, and the contractor or person acting as a contractor
4 and [~~his~~] the contractor's or person's sureties shall be liable
5 to the state for any excess costs occasioned thereby. Any
6 party receiving notice of termination of [~~his~~] a project or
7 subcontract under the provisions of this section may appeal the
8 finding of the director as provided in the Public Works Minimum
9 Wage Act."

10 Section 24. Section 13-4-13.1 NMSA 1978 (being Laws 2004,
11 Chapter 89, Section 1, as amended) is amended to read:

12 "13-4-13.1. PUBLIC WORKS CONTRACTS--REGISTRATION OF
13 CONTRACTORS AND SUBCONTRACTORS.--

14 A. Except as otherwise provided in this subsection,
15 in order to submit a bid valued at more than fifty thousand
16 dollars (\$50,000) in order to respond to a request for
17 proposals or to be considered for award of any portion of a
18 public works project greater than fifty thousand dollars
19 (\$50,000) for a public works project that is subject to the
20 Public Works Minimum Wage Act, the contractor, serving as a
21 prime contractor or not, shall be registered with the labor
22 [~~and industrial~~] relations division of the [~~labor~~] workforce
23 solutions department. Bidding documents issued or released by
24 a state agency or political subdivision of the state shall
25 include a clear notification that each contractor, prime

.167549.1GR

underscoring material = new
[bracketed material] = delete

1 contractor or subcontractor is required to be registered
2 pursuant to this subsection. The provisions of this section do
3 not apply to vocational classes in public schools or public
4 post-secondary educational institutions.

5 B. The state or any political subdivision of the
6 state shall not accept a bid on a public works project subject
7 to the Public Works Minimum Wage Act from a prime contractor
8 that does not provide proof of required registration for
9 itself.

10 C. Contractors and subcontractors may register with
11 the labor relations division on a form provided by the division
12 and in accordance with [~~labor~~] department rules. The division
13 shall charge an annual registration fee of two hundred dollars
14 (\$200). The division shall issue to the applicant a
15 certificate of registration within fifteen days after receiving
16 from the applicant the completed registration form and the
17 registration fee.

18 D. Registration fees collected by the labor
19 relations division shall be deposited in the labor enforcement
20 fund."

21 Section 25. Section 13-4-14 NMSA 1978 (being Laws 1965,
22 Chapter 35, Section 4, as amended) is amended to read:

23 "13-4-14. PAYMENT OF WAGES FROM FUNDS WITHHELD--LIST OF
24 CONTRACTORS VIOLATING ACT--ADDITIONAL RIGHT OF WAGE EARNERS.--

25 A. The [~~director of the~~] labor [~~and industrial~~]

.167549.1GR

underscoring material = new
[bracketed material] = delete

1 relations division of the [~~labor~~] workforce solutions
2 department shall certify to the contracting agency the names of
3 persons or firms the [~~director~~] division has found to have
4 disregarded their obligations to employees under the Public
5 Works Minimum Wage Act and the amount of arrears. The
6 contracting agency shall pay or cause to be paid to the
7 affected laborers and mechanics, from any accrued payments
8 withheld under the terms of the contract or designated for the
9 project, any wages found due such workers pursuant to the
10 Public Works Minimum Wage Act. The [~~director~~] division shall,
11 after notice to the affected persons, distribute a list to all
12 departments of the state giving the names of persons or firms
13 the [~~director~~] division has found to have willfully violated
14 the Public Works Minimum Wage Act. No contract or project
15 shall be awarded to the persons or firms appearing on this list
16 or to any firm, corporation, partnership or association in
17 which the persons or firms have an interest until three years
18 have elapsed from the date of publication of the list
19 containing the names of the persons or firms. A person to be
20 included on the list to be distributed may appeal the finding
21 of the [~~director~~] division as provided in the Public Works
22 Minimum Wage Act.

23 B. If the accrued payments withheld under the terms
24 of the contract, as mentioned in Subsection A of this section,
25 are insufficient to reimburse all the laborers and mechanics

.167549.1GR

underscored material = new
[bracketed material] = delete

1 with respect to whom there has been a failure to pay the wages
2 required pursuant to the Public Works Minimum Wage Act, the
3 laborers and mechanics shall have the right of action or
4 intervention or both against the contractor or person acting as
5 a contractor and ~~[his]~~ the contractor's or person's sureties,
6 conferred by law upon such persons furnishing labor and
7 materials, and, in such proceeding, it shall be no defense that
8 the laborers and mechanics accepted or agreed to less than the
9 required rate of wages or voluntarily made refunds. The
10 ~~[director of the]~~ labor ~~[and industrial]~~ relations division ~~[of~~
11 ~~the labor department]~~ shall refer such matters to the district
12 attorney in the appropriate county, and it is the duty and
13 responsibility of the district attorney to bring civil suit for
14 wages due and liquidated damages provided for in Subsection C
15 of this section.

16 C. In the event of any violation of the Public
17 Works Minimum Wage Act or implementing rules, the contractor,
18 subcontractor, employer or a person acting as a contractor
19 responsible for the violation shall be liable to any affected
20 employee for the employee's unpaid wages. In addition, the
21 contractor, subcontractor, employer or a person acting as a
22 contractor shall be liable to any affected employee for
23 liquidated damages beginning with the first day of covered
24 employment in the sum of one hundred dollars ~~[(\$100.00)]~~ (\$100)
25 for each calendar day on which a contractor, subcontractor,

.167549.1GR

underscored material = new
[bracketed material] = delete

1 employer or person acting as a contractor has willfully
2 required or permitted an individual laborer or mechanic to work
3 in violation of the provisions of the Public Works Minimum Wage
4 Act.

5 D. In an action brought pursuant to Subsection C of
6 this section, the court may award, in addition to all other
7 remedies, attorney fees and costs to an employee adversely
8 affected by a violation of the Public Works Minimum Wage Act by
9 a contractor, subcontractor, employee or a person acting as a
10 contractor."

11 Section 26. Section 13-4-14.1 NMSA 1978 (being Laws 2004,
12 Chapter 89, Section 2) is amended to read:

13 "13-4-14.1. LABOR ENFORCEMENT FUND--CREATION--USE.--The
14 "labor enforcement fund" is created in the state treasury. The
15 fund shall consist of contractor and subcontractor registration
16 fees collected by the labor [~~and industrial~~] relations division
17 of the [~~labor~~] workforce solutions department and all
18 investment and interest income from the fund. The fund shall
19 be administered by the division, and money in the fund is
20 appropriated to the division for administration and enforcement
21 of the Public Works Minimum Wage Act. Money in the fund shall
22 not revert to the general fund at the end of a fiscal year."

23 Section 27. Section 13-4-14.2 NMSA 1978 (being Laws 2004,
24 Chapter 89, Section 3) is amended to read:

25 "13-4-14.2. REGISTRATION CANCELLATION, REVOCATION,

.167549.1GR

underscored material = new
[bracketed material] = delete

1 SUSPENSION--INJUNCTIVE RELIEF.--The [~~director of the~~] labor
2 [~~and industrial~~] relations division of the [~~labor~~] workforce
3 solutions department may:

4 A. cancel, revoke or suspend with conditions,
5 including probation, the registration of any party required to
6 be registered pursuant to the Public Works Minimum Wage Act for
7 failure to comply with the registration provisions or for good
8 cause, subject to appeal pursuant to Section 13-4-15 NMSA 1978;
9 and

10 B. seek injunctive relief in district court for
11 failure to comply with the registration provisions of the
12 Public Works Minimum Wage Act."

13 Section 28. Section 13-4-15 NMSA 1978 (being Laws 1963,
14 Chapter 304, Section 5, as amended) is amended to read:

15 "13-4-15. APPEALS.--

16 A. Any interested person may appeal any
17 determination, finding or action of the [~~director of the~~] labor
18 [~~and industrial~~] relations division of the [~~labor~~] workforce
19 solutions department made pursuant to the Public Works Minimum
20 Wage Act to the labor and industrial commission sitting as the
21 appeals board by filing notice of the appeal with the
22 [~~director~~] division within fifteen days after the determination
23 has been issued or notice of the finding or action has been
24 given as provided in the Public Works Minimum Wage Act.

25 B. The labor and industrial commission, sitting as

.167549.1GR

underscored material = new
[bracketed material] = delete

1 the appeals board, shall adopt rules as it deems necessary for
2 the prompt disposition of appeals. A copy of the rules shall
3 be filed with the librarian of the supreme court law library.

4 C. The appeals board, within ten days after the
5 filing of the appeal, shall set the matter for an oral hearing
6 within thirty days and, following the hearing, shall enter a
7 decision within ten days after the close of the hearing and
8 promptly mail copies of the decision to the parties.

9 D. Decisions of the appeals board may be appealed
10 pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

11 Section 29. Section 13-4-36 NMSA 1978 (being Laws 1988,
12 Chapter 18, Section 6, as amended) is amended to read:

13 "13-4-36. SUBSTITUTION OF SUBCONTRACTOR.--

14 A. No contractor whose bid is accepted shall
15 substitute any person as subcontractor in place of the
16 subcontractor listed in the original bid, except that the using
17 agency shall consent to the substitution of another person as a
18 subcontractor in the following circumstances:

19 (1) when the subcontractor listed in the bid,
20 after having had a reasonable opportunity to do so, fails or
21 refuses to execute a written contract, when such written
22 contract, based upon the general terms, conditions, plans and
23 specifications for the project involved and the terms of such
24 subcontractor's written bid, is presented to ~~him~~ the
25 subcontractor by the contractor;

.167549.1GR

underscored material = new
[bracketed material] = delete

1 (2) when the subcontractor listed in the
2 original bid becomes bankrupt or insolvent prior to execution
3 of a subcontract;

4 (3) when the using agency refuses to approve
5 the subcontractor listed in the original bid, provided such
6 approval has been reserved in the bidding documents;

7 (4) when the subcontractor listed in the
8 original bid fails or refuses to perform [~~his~~] the subcontract;

9 (5) when the contractor demonstrates to the
10 using agency or its duly authorized officer that the name of
11 the subcontractor was listed as the result of an inadvertent
12 clerical error;

13 (6) when a bid alternate accepted by the using
14 agency causes the listed subcontractor's bid not to be low;

15 (7) when the contractor can substantiate to
16 the using agency that a listed subcontractor's bid is
17 incomplete;

18 (8) when the listed subcontractor fails or
19 refuses to meet the bond requirements of the contractor;

20 (9) when it is determined that the listed
21 subcontractor does not have a proper license to perform the
22 work and the contractor has submitted the name of the
23 subcontractor along with proof that the subcontractor bid work
24 for which [~~he~~] the subcontractor was not licensed by the
25 construction industries division of the regulation and

.167549.1GR

underscored material = new
[bracketed material] = delete

1 licensing department; or

2 (10) when it is determined by the using
3 agency, the prime contractor or [~~the director of~~] the labor
4 [~~and industrial~~] relations division of the [~~labor~~] workforce
5 solutions department that a listed subcontractor is not a
6 registered subcontractor on the date bids are unconditionally
7 accepted for consideration.

8 B. Prior to approval of the contractor's request
9 for substitution of a subcontractor, the using agency shall
10 give notice in writing to the listed subcontractor of the
11 contractor's request to substitute and of the reasons for the
12 request. The notice shall be served by certified or registered
13 mail to the last known address of the subcontractor. The
14 listed subcontractor who has been so notified has five working
15 days within which to submit written objections to the
16 substitution to the using agency. Failure to file written
17 objections shall constitute the listed subcontractor's consent
18 to the substitution. If written objections are filed, the
19 using agency shall give at least five working days notice in
20 writing to the listed subcontractor of a hearing by the using
21 agency on the contractor's request for substitution.

22 C. No contractor whose bid is accepted shall permit
23 any subcontract to be voluntarily assigned or transferred or
24 allow it to be performed by anyone other than the original
25 subcontractor listed in the original bid without the consent of

.167549.1GR

underscored material = new
[bracketed material] = delete

1 the using agency.

2 D. No contractor whose bid is accepted, other than
3 in the performance of change orders causing changes or
4 deviations from the original contract, shall sublet or
5 subcontract any portion of the work in excess of the listing
6 threshold as to which [~~his~~] the contractor's original bid did
7 not designate a subcontractor unless:

8 (1) the contractor fails to receive a bid for
9 a category of work. Under such circumstances, the contractor
10 may subcontract. The contractor shall designate on the listing
11 form that no bid was received; or

12 (2) the contractor fails to receive more
13 than one bid for a category of work. Under such
14 circumstances, the contractor may subcontract. The
15 contractor shall state on the listing form that only one
16 subcontractor's bid was received, together with the name of
17 the subcontractor. This designation shall not occur more
18 than one time on the subcontractor list."

19 Section 30. Section 13-4D-1 NMSA 1978 (being Laws 1992,
20 Chapter 74, Section 1) is amended to read:

21 "13-4D-1. SHORT TITLE.--~~[This act]~~ Chapter 13, Article
22 4D NMSA 1978 may be cited as the "Public Works Apprentice and
23 Training Act"."

24 Section 31. Section 13-4D-3 NMSA 1978 (being Laws 1992,
25 Chapter 74, Section 3) is amended to read:

.167549.1GR

underscored material = new
[bracketed material] = delete

1 "13-4D-3. DEFINITIONS.--As used in the Public Works
2 Apprentice and Training Act:

3 A. "approved apprentice and training programs"
4 means building trades apprenticeship and training programs in
5 New Mexico that are recognized by the bureau of
6 apprenticeship and training of the United States department
7 of labor or the New Mexico apprenticeship council;

8 B. "compliance statement" means a monthly record
9 of an employer's contributions paid into an approved
10 apprentice and training program in New Mexico or into the
11 public works apprentice and training fund;

12 C. "director" or "division" means [~~the director~~
13 ~~of~~] the labor [~~and industrial~~] relations division of the
14 [~~labor~~] workforce solutions department; and

15 D. "employer" means a contractor, subcontractor
16 or any person acting as a contractor on a public works
17 project, as that term is defined in the provisions of the
18 Construction Industries Licensing Act."

19 Section 32. Section 13-4D-4 NMSA 1978 (being Laws 1992,
20 Chapter 74, Section 4) is amended to read:

21 "13-4D-4. ADMINISTRATION.--

22 A. The Public Works Apprentice and Training Act
23 shall be administered by the [~~public works bureau of the~~
24 ~~labor and industrial~~] division [~~of the labor department~~].

25 The [~~bureau~~] division shall collect employers' contributions

.167549.1GR

underscored material = new
[bracketed material] = delete

1 in accordance with [~~this~~] that act, review employers'
2 compliance statements, review certified payroll reports to
3 verify training contributions, investigate allegations of and
4 impose penalties for employer noncompliance and disburse
5 funds as provided in Section [~~5 of the Public Works~~
6 ~~Apprentice and Training Act~~] 13-4D-5 NMSA 1978.

7 B. Public works construction projects, except for
8 street, highway, bridge, road, utility or maintenance
9 contracts with employers who elect not to participate in
10 training, shall not be constructed unless an employer agrees
11 to make contributions to approved apprentice and training
12 programs in New Mexico in which the employer is a participant
13 or to the public works apprentice and training fund
14 administered by the [~~public works bureau of the labor and~~
15 ~~industrial~~] division [~~of the labor department~~].

16 Contributions shall be made in the same manner and in the
17 same amount as apprentice and training contributions required
18 pursuant to wage rate determinations made by the [~~director~~]
19 division.

20 C. The [~~director~~] division shall adopt rules [~~and~~
21 ~~regulations~~] necessary to implement the provisions of the
22 Public Works Apprentice and Training Act."

23 Section 33. Section 13-4D-5 NMSA 1978 (being Laws 1992,
24 Chapter 74, Section 5, as amended) is amended to read:

25 "13-4D-5. FUND CREATED--DISBURSEMENT OF FUNDS.--[~~There~~

.167549.1GR

underscored material = new
[bracketed material] = delete

1 ~~is created~~] The "public works apprentice and training fund"
2 [~~in the labor and industrial division of the labor~~
3 ~~department~~] is created as a nonreverting fund in the state
4 treasury. Contributions into the fund shall be as provided
5 under the provisions of Section 13-4D-4 NMSA 1978. Funds
6 contributed under the provisions of the Public Works
7 Apprentice and Training Act shall be distributed in the
8 following manner:

9 A. no more than fifteen percent of the funds may
10 be used by the [~~public works bureau of the labor and~~
11 ~~industrial~~] division [~~of the labor department~~] to hire staff
12 to administer the funds collected by the division; and

13 B. the remainder of the funds shall be used for
14 approved apprentice and training programs in New Mexico. The
15 [~~labor and industrial~~] division [~~of the labor department~~]
16 shall develop an annual budget and, subject to appropriation
17 by the legislature in the general appropriation act, shall
18 disburse funds to approved apprentice and training programs
19 in New Mexico, taking into account participant contact hours
20 of classroom instruction and on-the-job training for the
21 preceding year, to be not less than ninety percent of one
22 hundred forty-four contact hours of classroom instruction per
23 participant per school year and not less than one thousand
24 hours of on-the-job training per twelve-month period.

25 Notwithstanding any language in the general appropriation act

.167549.1GR

underscored material = new
[bracketed material] = delete

1 that otherwise limits budget adjustments, if the fund balance
2 available for disbursement to approved programs exceeds the
3 amount appropriated, pursuant to Sections 6-3-23 through
4 6-3-25 NMSA 1978, the [~~labor~~] workforce solutions department
5 may request budget increases up to the excess fund balance
6 for distribution to the programs."

7 Section 34. Section 13-4D-6 NMSA 1978 (being Laws 1992,
8 Chapter 74, Section 6) is amended to read:

9 "13-4D-6. NOTICE TO EMPLOYERS--PUBLICATION OF
10 PROGRAMS.--

11 A. An employer's contribution requirement under
12 the provisions of the Public Works Apprentice and Training
13 Act shall be included with all minimum wage determinations
14 issued by the [~~labor and industrial~~] division [~~of the labor~~
15 ~~department~~] on all public works construction projects. The
16 [~~director~~] division shall also provide the contribution rate
17 for approved apprentice and training programs, and that
18 information shall be part of the public works construction
19 projects.

20 B. The [~~labor and industrial~~] division [~~of the~~
21 ~~labor department~~] shall publish a list of approved apprentice
22 and training programs in New Mexico."

23 Section 35. Section 13-4D-7 NMSA 1978 (being Laws 1992,
24 Chapter 74, Section 7, as amended) is amended to read:

25 "13-4D-7. NONCOMPLIANCE--PENALTIES.--An employer who

.167549.1GR

underscored material = new
[bracketed material] = delete

1 willfully and knowingly fails to comply with the requirements
2 of the Public Works Apprentice and Training Act shall be
3 subject to the following penalties:

4 A. a noncomplying employer shall pay a civil
5 penalty of ten dollars (\$10.00) for every calendar day of
6 noncompliance, and the penalty shall be imposed and collected
7 for deposit into the public works apprentice and training
8 fund by the [~~public works bureau of the labor and industrial~~]
9 division [~~of the labor department~~];

10 B. a noncomplying employer shall have the unpaid
11 contributions, as required under the provisions of the Public
12 Works Apprentice and Training Act, withheld as provided in
13 Subsections A and B of Section 13-4-14 NMSA 1978; and

14 C. a noncomplying employer shall not be permitted
15 to bid on any public works contracts as provided in
16 Subsections A and B of Section 13-4-14 NMSA 1978."

17 Section 36. Section 21-19-7 NMSA 1978 (being Laws 1983,
18 Chapter 299, Section 1, as amended) is amended to read:

19 "21-19-7. DEVELOPMENT TRAINING.--

20 A. The economic development department shall
21 establish a development training program that provides
22 quick-response classroom training, in-plant training and
23 skill-enhancement training to furnish qualified [~~manpower~~]
24 workforce resources for new or expanding industries,
25 nonretail service sector businesses and film and multimedia

.167549.1GR

underscored material = new
[bracketed material] = delete

1 production companies in New Mexico that have business or
2 production procedures that require skills unique to those
3 industries. Training shall be custom designed for, and based
4 on the special requirements of, each company or preemployment
5 training program for the film and multimedia industry. The
6 program shall be operated on a statewide basis and shall be
7 designed to assist any area in becoming more competitive
8 economically.

9 B. ~~[There is created]~~ The "industrial training
10 board" is created, composed of:

11 (1) the director of the economic development
12 division of the economic development department;

13 (2) the director of the instructional
14 support and vocational education division of the public
15 education department;

16 (3) ~~[the director of the governor's office~~
17 ~~of workforce training and development]~~ a representative of
18 the state workforce development board;

19 (4) the ~~[executive director of the~~
20 ~~commission on]~~ secretary of higher education;

21 (5) an employee of the workforce solutions
22 department ~~[of labor]~~;

23 (6) one member from organized labor
24 appointed by the governor; and

25 (7) one public member from the business

.167549.1GR

underscored material = new
[bracketed material] = delete

1 community appointed by the governor.

2 C. The industrial training board shall establish
3 policies and promulgate rules for the administration of
4 appropriated funds and shall provide review and oversight to
5 assure that funds expended from the development training fund
6 will generate business activity and give measurable growth to
7 the economic base of New Mexico within the legal limits while
8 preserving the ecological state of New Mexico and its people.

9 D. Subject to the approval of the industrial
10 training board, the economic development division of the
11 economic development department shall:

12 (1) administer all funds allocated or
13 appropriated for industrial development training purposes;

14 (2) provide designated training services;

15 (3) regulate, control and abandon any
16 training program established under the provisions of this
17 section;

18 (4) assist companies requesting training in
19 the development of a training proposal to meet the companies'
20 [~~manpower~~] workforce needs;

21 (5) contract for the implementation of all
22 training programs;

23 (6) provide for training by educational
24 institutions or by a company through in-plant training, at
25 that company's request; and

.167549.1GR

underscoring material = new
[bracketed material] = delete

1 (7) evaluate training efforts on a basis of
2 performance standards set forth by the industrial training
3 board.

4 E. The instructional support and vocational
5 education division of the public education department shall
6 provide technical assistance to the economic development
7 department concerning the development of agreements, the
8 determination of the most appropriate instructional training
9 to be provided and the review of training program
10 implementation.

11 F. Except as provided in Section 21-19-7.1 NMSA
12 1978 for film and multimedia production companies and
13 preemployment training programs for that industry, the state
14 shall contract with a company or an educational institution
15 to provide training or instructional services in accordance
16 with the approved training proposal and within the following
17 limitations:

18 (1) payment shall not be made for training
19 in excess of one thousand forty hours of training per trainee
20 for the total duration of training;

21 (2) training applicants shall have resided
22 within the state for a minimum of one year at any time prior
23 to the commencement of the training program and be of legal
24 status for employment;

25 (3) payment for institutional classroom

.167549.1GR

underscored material = new
[bracketed material] = delete

1 training shall be made pursuant to any accepted training
2 contract for a qualified training program;

3 (4) payment shall not be made pursuant to
4 any accepted training contract for rental of facilities
5 unless facilities are not available on site or at the
6 educational institution;

7 (5) all applicants shall be eligible under
8 the federal Fair Labor Standards Act of 1938, as amended, and
9 shall not have terminated a public school program within the
10 past three months except by graduation;

11 (6) trainees shall be guaranteed full-time
12 employment with the contracted company upon successful
13 completion of the training;

14 (7) persons employed to provide the
15 instructional services shall be exempt from the minimum
16 requirements established in the state plan for other state
17 vocational programs;

18 (8) payment shall not be made for training
19 programs or production of Indian jewelry or imitation Indian
20 jewelry unless a majority of those involved in the training
21 program or production are of Indian descent; and

22 (9) if a company hires twenty or more
23 trainees, payment shall not be made for training in a
24 municipality having a population of more than forty thousand
25 according to the most recent decennial census or a class A

.167549.1GR

underscoring material = new
[bracketed material] = delete

1 county unless the company:

2 (a) offers its employees and their
3 dependents health insurance coverage that is in compliance
4 with the New Mexico Insurance Code; and

5 (b) contributes not less than fifty
6 percent of the premium for the health insurance for those
7 employees who choose to enroll; provided that the fifty
8 percent employer contribution shall not be a requirement for
9 the dependent coverage that is offered."

10 Section 37. Section 22-13-26 NMSA 1978 (being Laws
11 2003, Chapter 161, Section 1) is amended to read:

12 "22-13-26. YOUTH PROGRAMS ESTABLISHED.--The children,
13 youth and families department, the [~~state department of~~]
14 public education department, the department of health, the
15 human services department and the [~~labor~~] workforce solutions
16 department shall each contract for programs, subject to
17 appropriations provided for that purpose, funded through a
18 public-private partnership, for community-based after-school
19 and other prevention programs and services for youth. Each
20 department shall ensure, prior to contracting for services,
21 that private matching funding is available and committed for
22 the purpose of the contract."

23 Section 38. Section 24-17A-3 NMSA 1978 (being Laws
24 1998, Chapter 82, Section 3) is amended to read:

25 "24-17A-3. INTERAGENCY COMMITTEE CREATED--COORDINATED

.167549.1GR

underscoring material = new
[bracketed material] = delete

1 SERVICE DELIVERY SYSTEM--LEAD AGENCY--SERVICE DELIVERY
2 SYSTEM.--

3 A. The "interagency committee on long-term care"
4 is created.

5 B. Members of the interagency committee on long-
6 term care shall be the heads of the following agencies or
7 their designated representatives:

8 (1) the ~~[state agency on]~~ aging and long-
9 term services department;

10 (2) the human services department;

11 (3) the department of health;

12 (4) the children, youth and families
13 department;

14 (5) the ~~[labor]~~ workforce solutions
15 department;

16 (6) the governor's ~~[committee on concerns of~~
17 ~~the handicapped]~~ commission on disability;

18 (7) the developmental disabilities planning
19 council; and

20 (8) the ~~[department of]~~ insurance division
21 of the public regulation commission.

22 C. The interagency committee on long-term care
23 shall design and implement a coordinated service delivery
24 system that fulfills the legislative mandate to develop a
25 coordinated long-term care system.

.167549.1GR

underscored material = new
[bracketed material] = delete

1 D. The governor shall appoint a chairperson from
2 the membership of the interagency committee on long-term
3 care."

4 Section 39. Section 27-2B-1 NMSA 1978 (being Laws 1998,
5 Chapter 8, Section 1 and Laws 1998, Chapter 9, Section 1) is
6 amended to read:

7 "27-2B-1. SHORT TITLE.--~~[Sections 1 through 20 of this~~
8 ~~act]~~ Chapter 27, Article 2B NMSA 1978 may be cited as the
9 "New Mexico Works Act"."

10 Section 40. Section 27-2B-5 NMSA 1978 (being Laws 1998,
11 Chapter 8, Section 5 and also Laws 1998, Chapter 9, Section
12 5, as amended) is amended to read:

13 "27-2B-5. WORK REQUIREMENTS--WORK PARTICIPATION
14 RATES.--

- 15 A. The following qualify as work activities:
- 16 (1) unsubsidized employment, including self-
17 employment;
 - 18 (2) subsidized private sector employment,
19 including self-employment;
 - 20 (3) subsidized public sector employment;
 - 21 (4) work experience, including work
22 associated with the refurbishing of publicly assisted housing
23 if sufficient private sector employment is not available;
 - 24 (5) on-the-job training;
 - 25 (6) job search and job readiness assistance,

.167549.1GR

underscoring material = new
[bracketed material] = delete

1 as long as the department complies with the federal act;

2 (7) community service programs;

3 (8) vocational education, except that
4 vocational education shall not qualify as a work activity for
5 longer than is provided by the federal act;

6 (9) job skills training activities directly
7 related to employment;

8 (10) education directly related to
9 employment for a participant who has not received a high
10 school diploma or a certificate of high school equivalency;

11 (11) satisfactory attendance at a secondary
12 school or course of study leading to a certificate of general
13 equivalency in the case of a participant who has not
14 completed secondary school or received such a certificate;
15 and

16 (12) the provision of child care services to
17 a participant who is participating in a community service
18 program.

19 B. The department shall recognize community
20 service programs and job training programs that are operated
21 by an Indian nation, tribe or pueblo.

22 C. The department may not require a participant
23 to work more than four hours per week over the work
24 requirement rate set pursuant to the federal act.

25 D. The department shall require a parent,

.167549.1GR

1 caretaker or other adult who is a member of a benefit group
2 to engage in a work activity once the department determines
3 [he] the person is ready to engage in a work activity or once
4 [he] the person has received cash assistance or services for
5 twenty-four months or as otherwise required by the federal
6 act, whether or not consecutive, whichever is earlier.

7 E. The following qualify as temporary alternative
8 work activities that the department may establish for no
9 longer than twelve weeks except as otherwise provided:

10 (1) participating in parenting classes,
11 money management classes or life skills training;

12 (2) participating in a certified alcohol or
13 drug addiction program;

14 (3) in the case of a homeless benefit group,
15 finding a home;

16 (4) in the case of a participant who is a
17 victim of domestic violence residing in a domestic violence
18 shelter or receiving counseling or treatment or participating
19 in criminal justice activities directed at prosecuting the
20 domestic violence perpetrator, for no longer than twenty-four
21 weeks; and

22 (5) in the case of a participant who does
23 not speak English, participating in a course in English as a
24 second language.

25 F. Subject to the availability of funds, the

underscored material = new
[bracketed material] = delete

1 department in cooperation with the [~~labor~~] workforce
2 solutions department, [~~New Mexico office of~~] Indian affairs
3 department and other appropriate state agencies may develop
4 projects to provide for the placement of participants in work
5 activities, including the following:

6 (1) participating in unpaid internships with
7 private and government entities;

8 (2) refurbishing publicly assisted housing;

9 (3) volunteering at a head start program or
10 a school;

11 (4) weatherizing low-income housing; and

12 (5) restoring public sites and buildings,
13 including monuments, parks, fire stations, police buildings,
14 jails, libraries, museums, auditoriums, convention halls,
15 hospitals, buildings for administrative offices and city
16 halls.

17 G. If a participant is engaged in full-time post-
18 secondary education studies or an activity set out in
19 Paragraphs (9) through (11) of Subsection A of this section,
20 the participant shall engage in another work activity at the
21 same time. Additionally, for two-parent families that
22 receive federally funded child-care assistance, the
23 participant's spouse shall engage in a work activity set out
24 in Paragraphs (1) through (5) or (7) of Subsection A of this
25 section unless the participant suffers from a temporary or

.167549.1GR

1 complete disability that bars [~~him~~] the participant from
2 engaging in a work activity or [~~he~~] the participant is barred
3 from engaging in a work activity because [~~he~~] the participant
4 provides sole care for a disabled person.

5 H. A participant engaged in post-secondary
6 education studies shall make reasonable efforts to obtain a
7 loan, scholarship, grant or other assistance to pay for costs
8 and tuition and the department shall disregard those amounts
9 in the eligibility determination.

10 I. For as long as the described conditions exist,
11 the following are exempt from the work requirement:

12 (1) a participant barred from engaging in a
13 work activity because [~~he~~] the participant is temporarily or
14 completely disabled;

15 (2) a participant over age sixty;

16 (3) a participant barred from engaging in a
17 work activity because [~~he~~] the participant provides the sole
18 care for a disabled person;

19 (4) a single custodial parent caring for a
20 child less than twelve months old for a lifetime total of
21 twelve months;

22 (5) a single custodial parent caring for a
23 child under six years of age if the parent is unable to
24 obtain child care for one or more of the following reasons:

25 (a) unavailability of appropriate

underscored material = new
[bracketed material] = delete

1 child care within a reasonable distance from the parent's
2 home or work as defined by the children, youth and families
3 department;

4 (b) unavailability or unsuitability of
5 informal child care by a relative under other arrangements as
6 defined by the children, youth and families department; or

7 (c) unavailability of appropriate and
8 affordable formal child-care arrangements as defined by the
9 children, youth and families department;

10 (6) a pregnant woman during her last
11 trimester of pregnancy;

12 (7) a participant prevented from working by
13 a temporary emergency or a situation that precludes work
14 participation for thirty days or less;

15 (8) a participant who demonstrates by
16 reliable medical, psychological or mental reports, court
17 orders or police reports that family violence or threat of
18 family violence effectively bars the participant from
19 employment; and

20 (9) a participant who demonstrates good
21 cause of the need for the exemption."

22 Section 41. Section 28-1-2 NMSA 1978 (being Laws 1969,
23 Chapter 196, Section 2, as amended) is amended to read:

24 "28-1-2. DEFINITIONS.--As used in the Human Rights Act:

25 A. "person" means one or more individuals, a

.167549.1GR

underscoring material = new
[bracketed material] = delete

1 partnership, association, organization, corporation, joint
2 venture, legal representative, trustees, receivers or the
3 state and all of its political subdivisions;

4 B. "employer" means any person employing four or
5 more persons and any person acting for an employer;

6 C. "commission" means the human rights
7 commission;

8 D. "director" or "bureau" means the [~~director of~~
9 ~~the~~] human rights bureau of the labor relations division of
10 the [~~labor~~] workforce solutions department;

11 E. "employee" means any person in the employ of
12 an employer or an applicant for employment;

13 F. "labor organization" means any organization
14 that exists for the purpose in whole or in part of collective
15 bargaining or of dealing with employers concerning
16 grievances, terms or conditions of employment or of other
17 mutual aid or protection in connection with employment;

18 G. "employment agency" means any person regularly
19 undertaking with or without compensation to procure
20 opportunities to work or to procure, recruit or refer
21 employees;

22 H. "public accommodation" means any establishment
23 that provides or offers its services, facilities,
24 accommodations or goods to the public, but does not include a
25 bona fide private club or other place or establishment that

.167549.1GR

underscored material = new
[bracketed material] = delete

1 is by its nature and use distinctly private;

2 I. "housing accommodation" means any building or
3 portion of a building that is constructed or to be
4 constructed, which is used or intended for use as the
5 residence or sleeping place of any individual;

6 J. "real property" means lands, leaseholds or
7 commercial or industrial buildings, whether constructed or to
8 be constructed, offered for sale or rent, and any land rented
9 or leased for the use, parking or storage of house trailers;

10 K. "secretary" means the secretary of [~~labor~~]
11 workforce solutions;

12 L. "unlawful discriminatory practices" means
13 those unlawful practices and acts specified in Section 28-1-7
14 NMSA 1978;

15 M. "physical or mental handicap" means a physical
16 or mental impairment that substantially limits one or more of
17 a person's major life activities. A person is also
18 considered to be physically or mentally handicapped if [~~he~~]
19 the person has a record of a physical or mental handicap or
20 is regarded as having a physical or mental handicap;

21 N. "major life activities" means functions such
22 as caring for one's self, performing manual tasks, walking,
23 seeing, hearing, speaking, breathing, learning and working;

24 O. "applicant for employment" means a person
25 applying for a position as an employee;

.167549.1GR

underscored material = new
[bracketed material] = delete

1 P. "sexual orientation" means heterosexuality,
2 homosexuality or bisexuality, whether actual or perceived;
3 and

4 Q. "gender identity" means a person's
5 self-perception, or perception of that person by another, of
6 the person's identity as a male or female based upon the
7 person's appearance, behavior or physical characteristics
8 that are in accord with or opposed to the person's physical
9 anatomy, chromosomal sex or sex at birth."

10 Section 42. Section 28-1-10 NMSA 1978 (being Laws 1969,
11 Chapter 196, Section 9, as amended) is amended to read:

12 "28-1-10. GRIEVANCE PROCEDURE.--

13 A. A person claiming to be aggrieved by an
14 unlawful discriminatory practice and a member of the
15 commission who has reason to believe that discrimination has
16 occurred may file with the human rights [~~division of the~~
17 ~~labor department~~] bureau a written complaint that shall state
18 the name and address of the person alleged to have engaged in
19 the discriminatory practice, all information relating to the
20 discriminatory practice and any other information that may be
21 required by the commission. All complaints shall be filed
22 with the [~~division~~] bureau within three hundred days after
23 the alleged act was committed.

24 B. The [~~director~~] bureau shall advise the
25 respondent that a complaint has been filed against the

.167549.1GR

underscored material = new
[bracketed material] = delete

1 respondent and shall furnish the respondent with a copy of
2 the complaint. The [~~director~~] bureau shall promptly
3 investigate the alleged act. If the [~~director~~] bureau
4 determines that the complaint lacks probable cause, the
5 [~~director~~] bureau shall dismiss the complaint and notify the
6 complainant and respondent of the dismissal. The complaint
7 shall be dismissed subject to appeal as in the case of other
8 orders of the commission.

9 C. If the [~~director~~] bureau determines that
10 probable cause exists for the complaint, the [~~director~~]
11 bureau shall attempt to achieve a satisfactory adjustment of
12 the complaint through persuasion and conciliation. The
13 [~~director and staff~~] bureau shall neither disclose what has
14 transpired during the attempted conciliation nor divulge
15 information obtained during any hearing before the commission
16 or a commissioner prior to final action relating to the
17 complaint. An officer or employee of the [~~labor~~] workforce
18 solutions department who makes public in any manner
19 information in violation of this subsection is guilty of a
20 misdemeanor and upon conviction shall be fined not more than
21 one thousand dollars (\$1,000) or imprisoned not more than one
22 year.

23 D. A person who has filed a complaint with the
24 [~~human rights division~~] bureau may request and shall receive
25 an order of nondetermination from the [~~director~~] bureau

.167549.1GR

underscoring material = new
[bracketed material] = delete

1 without delay after the [~~division's~~] bureau's receipt of the
2 complaint and in jointly filed cases, after the federal
3 complaint has been closed. The order of nondetermination may
4 be appealed pursuant to the provisions of Section 28-1-13
5 NMSA 1978.

6 E. In the case of a complaint filed by or on
7 behalf of a person who has an urgent medical condition and
8 has notified the [~~director~~] bureau in writing of the test
9 results, the director shall make the determination whether
10 probable cause exists for the complaint and shall attempt any
11 conciliation efforts within ninety days of the filing of the
12 written complaint or notification, whichever occurs last.

13 F. If conciliation fails or if, in the opinion of
14 the [~~director~~] bureau, informal conference cannot result in
15 conciliation and the complainant has not requested a waiver
16 of right to hearing pursuant to the provisions of Subsection
17 J of this section, the commission shall issue a written
18 complaint in its own name against the respondent, except that
19 in the case of a complaint filed by or on behalf of a person
20 who has an urgent medical condition, who has notified the
21 [~~director~~] bureau in writing of the test results and who so
22 elects, the [~~director~~] bureau shall issue an order of
23 nondetermination, which may be appealed pursuant to the
24 provisions of Section 28-1-13 NMSA 1978. The complaint shall
25 set forth the alleged discriminatory practice, the

.167549.1GR

underscored material = new
[bracketed material] = delete

1 secretary's [~~regulation~~] rule or the section of the Human
2 Rights Act alleged to have been violated and the relief
3 requested. The complaint shall require the respondent to
4 answer the allegations of the complaint at a hearing before
5 the commission or hearing officer and shall specify the date,
6 time and place of the hearing. The hearing date shall not be
7 more than fifteen or less than ten days after service of the
8 complaint. The complaint shall be served on the respondent
9 personally or by registered mail, return receipt requested.
10 The hearing shall be held in the county where the respondent
11 is doing business or the alleged discriminatory practice
12 occurred.

13 G. Within one year of the filing of a complaint
14 by a person aggrieved, the commission or [~~its director~~] the
15 bureau shall:

- 16 (1) dismiss the complaint for lack of
17 probable cause;
- 18 (2) achieve satisfactory adjustment of the
19 complaint as evidenced by order of the commission; or
- 20 (3) file a formal complaint on behalf of the
21 commission.

22 H. Upon the commission's petition, the district
23 court of the county where the respondent is doing business or
24 the alleged discriminatory practice occurred may grant
25 injunctive relief pending hearing by the commission or

.167549.1GR

underscored material = new
[bracketed material] = delete

1 pending judicial review of an order of the commission so as
2 to preserve the status quo or to ensure that the commission's
3 order as issued will be effective. The commission shall not
4 be required to post a bond.

5 I. For purposes of this section, "urgent medical
6 condition" means any medical condition as defined by an
7 appropriate medical authority through documentation or by
8 direct witness of a clearly visible disablement that poses a
9 serious threat to the life of the person with the medical
10 condition.

11 J. The complainant may seek a trial de novo in
12 the district court in lieu of a hearing before the
13 commission, provided the complainant requests from the
14 [~~director~~] bureau, in writing, a waiver of complainant's
15 right to hearing within sixty days of service of written
16 notice of a probable cause determination by the [~~director~~]
17 bureau. The [~~director~~] bureau shall approve the waiver
18 request and shall serve notice of the waiver upon the
19 complainant and respondent. The complainant may request a
20 trial de novo pursuant to Section 28-1-13 NMSA 1978 within
21 ninety days from the date of service of the waiver. Issuance
22 of the notice shall be deemed a final order of the commission
23 for the purpose of appeal pursuant to Section 28-1-13 NMSA
24 1978."

25 Section 43. Section 28-1-11 NMSA 1978 (being Laws 1969,

.167549.1GR

underscored material = new
[bracketed material] = delete

1 Chapter 196, Section 10, as amended) is amended to read:

2 "28-1-11. HEARING PROCEDURES.--

3 A. The respondent to a complaint made pursuant to
4 Section 28-1-10 NMSA 1978 may file a written answer to the
5 complaint, appear at the hearing, give testimony and be
6 represented by counsel and may obtain from the commission
7 subpoenas for any person or for the production of any
8 evidence pertinent to the proceeding. The complainant shall
9 be present at the hearing and may be represented by counsel.
10 Each party shall have the right to amend [~~his~~] the party's
11 complaint or answer.

12 B. A panel of three members of the commission
13 designated by the [~~chairman~~] chair shall sit, and a decision
14 agreed upon by two members of the panel shall be the decision
15 of the commission. However, no commissioner who has filed a
16 complaint may sit on the panel hearing [~~his~~] the
17 commissioner's complaint. Hearings also may be conducted by
18 a hearing officer employed by the [~~human rights division of~~
19 ~~the labor department~~] bureau or, if the hearing officer is
20 unavailable, one member of the commission may be designated
21 by the [~~chairman~~] chair to act as a hearing officer. A
22 hearing officer shall have the same powers and duties as a
23 commissioner as set forth in Paragraph (2) of Subsection A of
24 Section 28-1-4 NMSA 1978.

25 C. The complainant or [~~his~~] the complainant's

.167549.1GR

underscoring material = new
[bracketed material] = delete

1 representative shall present to the commission or the hearing
2 officer the case supporting the complaint. No evidence
3 concerning prior attempts at conciliation shall be received.
4 [~~The director~~] A staff member of the bureau shall not
5 participate in the hearing, except as a witness.

6 D. The commission and the hearing officer shall
7 not be bound by the formal rules of evidence governing courts
8 of law or equity but shall permit reasonable direct
9 examination and cross-examination and the submission of
10 briefs. Testimony at the hearing shall be taken under oath
11 and recorded by tape or otherwise. Upon the request of any
12 party, testimony shall be transcribed, provided that all
13 costs of transcribing shall be paid by the party so
14 requesting. Each commissioner and hearing officer may
15 administer oaths.

16 E. Upon the conclusion of a hearing conducted by
17 a hearing officer, the hearing officer shall prepare a
18 written report setting forth proposed findings of fact and
19 conclusions of law and recommending the action to be taken by
20 the commission. The hearing officer shall submit the report
21 to a review panel consisting of no more than three members of
22 the commission designated by the [~~chairman~~] chair. No
23 commissioner may sit on the panel reviewing the hearing
24 officer's report issued in connection with a complaint filed
25 by the commissioner. A decision by a majority of the members

.167549.1GR

underscoring material = new
[bracketed material] = delete

1 of the review panel shall be the decision of the commission.
2 If the commission finds from the evidence presented at any
3 hearing held pursuant to this section that the respondent has
4 engaged in a discriminatory practice, it shall make written
5 findings of fact, conclusions of law and its decision based
6 upon the findings of fact and conclusions of law. The
7 commission may adopt, modify or reject the proposed findings
8 of fact and conclusions of law and the action recommended by
9 the hearing officer. Within five days after any order is
10 rendered by the commission following a hearing, the
11 commission shall serve upon each party of record and ~~his~~
12 the party's attorney, if any, a written copy of the order by
13 certified mail to the party's address of record. All parties
14 shall be deemed to have been served on the tenth day
15 following the mailing. As part of its order, the commission
16 may require the respondent to pay actual damages to the
17 complainant and to pay reasonable ~~attorneys'~~ attorney fees,
18 if the complainant was represented by private counsel, and to
19 take such affirmative action as the commission considers
20 necessary, including a requirement for reports of the manner
21 of compliance.

22 F. If the commission finds from the evidence that
23 the respondent has not engaged in a discriminatory practice,
24 it shall make written findings of fact and serve the
25 complainant and respondent with a copy of the findings of

.167549.1GR

underscoring material = new
[bracketed material] = delete

1 fact and with an order dismissing the complaint."

2 Section 44. Section 28-10-1 NMSA 1978 (being Laws 1973,
3 Chapter 349, Section 1, as amended) is amended to read:

4 "28-10-1. GOVERNOR'S COMMISSION ON DISABILITY.--

5 A. [~~There is created~~] The "governor's commission
6 on disability" is created, consisting of fifteen members,
7 nine of whom shall be appointed by the governor. The six
8 remaining members shall be the director of the vocational
9 rehabilitation division of the public education department,
10 the secretary of [~~labor~~] workforce solutions or [~~his~~] the
11 secretary's designee, the director of the behavioral health
12 services division of the department of health, the secretary
13 of children, youth and families or [~~his~~] the secretary's
14 designee, the [~~director~~] secretary of [~~the state agency on~~]
15 aging and long-term services or [~~his~~] the secretary's
16 designee and the secretary of human services or [~~his~~] the
17 secretary's designee. Initially, three members shall be
18 appointed for terms ending December 31, 1978, three members
19 for terms ending December 31, 1980 and three members for
20 terms ending December 31, 1982. Thereafter, appointments
21 shall be for six years expiring on December 31 of even-
22 numbered years. Appointed members shall be appointed from
23 different geographic areas of the state and from the major
24 disability services in the state. Appointed members shall
25 include individuals with disabilities, representatives of

.167549.1GR

underscored material = new
[bracketed material] = delete

1 government, private enterprise, parents or guardians of
2 individuals with disabilities and professionals in, or those
3 who are interested in, service for individuals with
4 disabilities. Not more than five of the members appointed by
5 the governor shall be of the same political party.

6 B. A majority of the members of the commission
7 constitutes a quorum for the transaction of business. The
8 commission shall meet at least twice a year and shall
9 annually elect a [~~chairman~~] chair and a vice [~~chairman~~]
10 chair.

11 C. The commission shall be primarily concerned
12 with those individuals with disabilities who have a condition
13 [~~which~~] that, regardless of its physical or mental origin,
14 constitutes a substantial occupational disadvantage."

15 Section 45. Section 28-16A-19 NMSA 1978 (being Laws
16 2003, Chapter 323, Section 1) is amended to read:

17 "28-16A-19. INFORMATION AND REFERRAL TASK FORCE
18 CREATION.--[~~There is created~~] An information and referral
19 task force [~~located~~] is created in the developmental
20 disabilities planning council to develop a statewide,
21 comprehensive "211" information and referral plan for use as
22 a telephone dialing code for access to health and human
23 services. The plan shall include a tariff structure based on
24 existing agreements, a common taxonomy of terms, coordination
25 between public and private systems and standardized statewide

.167549.1GR

underscored material = new
[bracketed material] = delete

1 training and exploration of a centralized information
2 repository. The task force shall include representation from
3 the department of health; the human services department; the
4 children, youth and families department; the [~~labor~~]
5 workforce solutions department; the [~~state agency on~~] aging
6 and long-term services department; the internet long-term
7 care link program; the governor's [~~committee on concerns of~~
8 ~~the handicapped~~] commission on disability; the New Mexico
9 commission for the blind; the commission for deaf
10 and hard-of-hearing persons; a statewide organization that
11 raises money for health and human service purposes; and other
12 interested parties."

13 Section 46. Section 28-19-1 NMSA 1978 (being Laws 1991,
14 Chapter 252, Section 1) is amended to read:

15 "28-19-1. MARTIN LUTHER KING, JR. COMMISSION--CREATED--
16 DEFINED--MEMBERS--TERMS--COMPENSATION.--

17 A. The "Martin Luther King, Jr. commission" is
18 created. The purpose of the commission is to develop,
19 promote, coordinate and review statewide plans and activities
20 for the annual commemoration and celebration of the birthday
21 of Martin Luther King, Jr. in accordance with Section 12-5-2
22 NMSA 1978.

23 B. As used in [~~Sections 1 through 4 of this act~~]
24 Chapter 28, Article 19 NMSA 1978, "commission" means the
25 Martin Luther King, Jr. commission.

.167549.1GR

underscored material = new
[bracketed material] = delete

1 C. The commission shall be [~~comprised~~] composed
2 of thirteen members as follows:

3 (1) four members appointed by the governor;

4 (2) one member appointed by the president
5 pro tempore of the senate;

6 (3) one member appointed by the minority
7 leader of the senate;

8 (4) one member appointed by the speaker of
9 the house of representatives;

10 (5) one member appointed by the minority
11 leader of the house of representatives;

12 (6) the state treasurer or [~~his~~] the state
13 treasurer's designee;

14 (7) the secretary of state or [~~his~~] the
15 secretary's designee;

16 (8) a Native American appointed by the [~~New~~
17 ~~Mexico office of~~] Indian affairs department;

18 (9) the [~~director~~] chief of the human rights
19 [~~division~~] bureau of the [~~labor~~] workforce solutions
20 department or [~~his~~] the chief's designee; and

21 (10) the [~~chairman~~] chair of the [~~New Mexico~~
22 ~~state corporation~~] public regulation commission or [~~his~~] the
23 chair's designee.

24 D. [~~Members of the commission shall be appointed~~
25 ~~initially for terms as follows: seven members shall be~~

.167549.1GR

underscored material = new
[bracketed material] = delete

1 ~~appointed for terms of two years and six members shall be~~
2 ~~appointed for terms of four years. The initial terms shall~~
3 ~~be selected by random drawing.]~~ After the expiration of the
4 initial terms, all appointed members shall [~~be appointed~~]
5 serve for four-year terms. The initial commission shall be
6 appointed within forty-five days of the effective date of
7 this [~~aet~~] section. Vacancies resulting from the death or
8 resignation of [~~a~~] an appointed member shall be filled by
9 appointment by the commission [~~chairman~~] chair for the
10 unexpired portion of the term of the member creating the
11 vacancy. In filling any vacancy, the commission [~~chairman~~]
12 chair may accept recommendations from the person who
13 originally appointed the member creating the vacancy.

14 E. The members of the commission shall receive no
15 compensation for their service.

16 F. The members of the commission shall select a
17 [~~chairman~~] chair from among the members of the commission.

18 G. The commission shall appoint an executive
19 director to coordinate all activities on the commission's
20 behalf."

21 Section 47. Section 50-1-2 NMSA 1978 (being Laws 1931,
22 Chapter 9, Section 8, as amended) is amended to read:

23 "50-1-2. HEARINGS--LOCATION--NOTICE--CONDUCT--WITNESS
24 FEES--SUBPOENAS--PENALTY.--The director of the labor [~~and~~
25 industrial] relations division of the workforce solutions

.167549.1GR

underscored material = new
[bracketed material] = delete

1 department shall have the power to hold hearings upon and
2 [~~therein~~] examine witnesses, administer oaths and take
3 testimony in all matters specified in any complaint [~~with~~
4 ~~him~~] filed with the division and relating to [~~his~~] the
5 division's duties and the requirements of Chapter 50, Article
6 1 NMSA 1978, which hearings shall be held in some suitable
7 place in the vicinity in which the testimony to be taken is
8 applicable, and may issue subpoena for and compel the
9 attendance of witnesses at such hearings; provided, however,
10 that the [~~director of the labor and industrial~~] division
11 shall serve upon the employer and such employees as [~~he~~] the
12 division deems necessary a written notice of the time, place,
13 purpose and scope of the hearing at least ten days prior to
14 the date thereof. At the hearing, the employer and any
15 employees to be affected by any of the matters and things
16 mentioned in the notice shall have the right to appear in
17 person or by counsel, to cross-examine witnesses and to
18 introduce such testimony as is competent, relevant and
19 material to the subject, purpose and scope of the hearing as
20 stated in the notice; provided, however, that [~~no~~] witness
21 fees shall not be paid to [~~any~~] a witness unless [~~he~~] the
22 witness is required to testify at a place more than five
23 miles from [~~his~~] the witness's place of residence, in which
24 event the witness shall be paid the same fees as a witness
25 before a district court. Any person duly subpoenaed under

.167549.1GR

underscored material = new
[bracketed material] = delete

1 the provisions of this section who willfully refuses or
2 neglects to testify at the time and place named in the
3 subpoena [~~shall be~~] is guilty of a misdemeanor and upon
4 conviction [~~thereof~~] shall be punished by a fine of not less
5 than fifty dollars (\$50.00) [~~nor~~] or more than five hundred
6 dollars (\$500) or by imprisonment in the county jail not less
7 than ten days [~~nor~~] or more than thirty days or by both
8 [~~such~~] a fine and imprisonment."

9 Section 48. Section 50-1-3 NMSA 1978 (being Laws 1931,
10 Chapter 9, Section 9) is amended to read:

11 "50-1-3. POWERS AND DUTIES OF DIVISION.--~~[Said~~
12 ~~commissioner shall inform himself]~~

13 A. The labor relations division of the workforce
14 solutions department shall become informed of all laws of the
15 state [~~for the protection of~~] that:

16 (1) protect life and limb in any of the
17 industries of the state;

18 [~~all laws regulating~~] (2) regulate the hours
19 of labor, the employment of minors and the payment of wages;

20 [~~and all other laws~~] (3) are enacted for the
21 protection, health and benefit of employees;

22 [~~and thereunder~~] (4) foster, promote and
23 develop the welfare of wage earners;

24 (5) advance opportunities for profitable
25 employment;

.167549.1GR

underscored material = new
[bracketed material] = delete

1 (6) require, acquire and disseminate useful
2 information on all [~~subject~~] subjects connected with labor;
3 and

4 (7) [~~assist in the enforcement of the~~
5 ~~workman's compensation laws and the~~] enforce employers'
6 liability acts of the state.

7 [~~He shall have the power and authority, when in~~
8 ~~his judgment he deems it necessary, to~~]

9 B. The division may take assignment of wage
10 claims and prosecute actions for collection of wages or other
11 claims or demands of employees or ex-employees, who are
12 financially unable to employ counsel, in cases in which, in
13 the judgment of the [~~commissioner~~] division, such claims and
14 demands are valid and enforceable in the courts.

15 [~~It shall be the duty of said labor commissioner~~
16 ~~to~~]

17 C. The division shall enforce all labor laws in
18 [~~the State of~~] New Mexico, the enforcement of which is not
19 specifically and exclusively vested in any other officer,
20 board or commission, state or federal. [~~and~~] Whenever, after
21 due inquiry, [~~he shall be~~] the division is satisfied that any
22 such law has been violated or that any employee or ex-
23 employee, financially unable to employ counsel, has a just,
24 valid and enforceable claim for wages or other claims or
25 demands, [~~he~~] the division shall present the facts to the

.167549.1GR

underscoring material = new
[bracketed material] = delete

1 district attorney of the county in which ~~[such]~~ the violation
2 occurred or wage claim accrued, and it shall be the duty of
3 ~~[such]~~ the district attorney to prosecute the same. ~~[Said~~
4 ~~labor commissioner]~~ The division shall also prosecute claims
5 arising as between employment agencies and those seeking
6 employment when, in ~~[his]~~ the division's judgment, they are
7 valid and enforceable in the courts."

8 Section 49. Section 50-1-4 NMSA 1978 (being Laws 1931,
9 Chapter 9, Section 10) is amended to read:

10 "50-1-4. ANNUAL REPORT OF DIVISION.--The ~~[commissioner]~~
11 labor relations division of the workforce solutions
12 department shall collect, systematize and present in annual
13 reports to the governor statistical details relating to ~~[his~~
14 ~~office]~~ the division's work and especially as bearing upon
15 the commercial, social and sanitary conditions of the
16 employees, the means of escape from dangers incident to their
17 employment, the protection of life and health in factory or
18 other places of employment, the labor of women and children
19 and the hours of labor exacted from them and in general all
20 matters ~~[which]~~ that tend to affect the prosperity of the
21 mechanical, manufacturing and productive industries of this
22 state and of the persons employed ~~[therein]~~ in those
23 industries."

24 Section 50. Section 50-1-5 NMSA 1978 (being Laws 1931,
25 Chapter 9, Section 11) is amended to read:

.167549.1GR

underscored material = new
[bracketed material] = delete

1 "50-1-5. INSPECTIONS BY DIVISION--OBSTRUCTING--NOTICE--
2 OFFENSES--PENALTIES.--[~~Said labor commissioner shall have the~~
3 ~~power to~~]

4 A. The labor relations division of the workforce
5 solutions department may enter any store, factory, foundry,
6 mill, office, workshop, mine or public or private works at
7 any time during working hours and remain as long as necessary
8 [for the purpose of gathering] to gather facts and statistics
9 contemplated by [this Act and] Chapter 50, Article 1 NMSA
10 1978, to examine safeguards and methods of protection from
11 danger to employees and the sanitary conditions of the
12 buildings and surroundings and to make a record thereof
13 [and]. Any owner, corporation, occupant or officer who
14 [shall refuse such] refuses entry to [said labor commissioner
15 his officers or agents shall be] an employee of the division
16 is guilty of a misdemeanor and upon conviction [thereof]
17 shall be punished by a fine of not less than fifty dollars
18 [nor] (\$50.00) or more than five hundred dollars (\$500) or by
19 imprisonment in the county jail not less than ten days [nor]
20 or more than thirty days or by both [such] fine and
21 imprisonment. [Provided, that said labor commissioner or his
22 or agents] The division shall, upon entering any store,
23 factory, foundry, mill, office, workshop, mine or any other
24 public or private works, notify the owner, manager,
25 superintendent or anyone in charge of [such] the place of

.167549.1GR

underscored material = new
[bracketed material] = delete

1 labor of [~~his~~] the division's intention to make [~~such~~] a
2 visit of inspection, and [~~such~~] the owner, manager,
3 superintendent or party in charge shall have the right,
4 either [~~by himself~~] in person or by an agent, to accompany
5 [~~such commissioner or his agent or agents~~] the employee of
6 the division during the entire time [~~he~~] the employee spends
7 upon [~~such~~] the premises. [~~And, provided, further, that~~]

8 B. It [~~shall be~~] is unlawful for [~~any such labor~~
9 ~~commissioner his agent or agents, during the term of office~~
10 ~~to which such commissioner shall have been appointed~~] an
11 employee of the division to advocate, either directly or
12 indirectly, verbally or by written or printed matter,
13 [~~advocate~~] the organization or changes in organization or the
14 attempt at disorganization of a labor organization or a labor
15 [~~unions~~] union or [~~to~~] officially to do any act either for or
16 against any political party in [~~the State of~~] New Mexico.
17 [~~Any commissioner, or his agent or agents~~]

18 C. An employee of the division who [~~fail~~] fails to
19 give [~~such~~] notice of [~~such~~] a visit or refuses [~~such~~] the
20 owner, manager, superintendent or party in charge, or [~~his~~]
21 an agent, the right to accompany [~~him~~] the employee at all
22 times on visits of inspection provided for [~~herein~~] in this
23 section or who participates in the organization, changing or
24 disorganization of the labor union or labor association,
25 contrary to the provisions [~~hereof~~] of this section, or who

.167549.1GR

underscored material = new
[bracketed material] = delete

1 officially does any act for or against any political party in
2 [~~the State of~~] New Mexico, [~~during his term of office, shall~~
3 ~~be deemed~~] is guilty of a misdemeanor and upon conviction
4 [~~thereof~~] shall be fined any sum not less than fifty dollars
5 [~~nor~~] (\$50.00) or more than five hundred dollars (\$500) or by
6 imprisonment in the county jail of not less than ten days
7 [~~nor~~] or more than thirty days or by both [~~such~~] a fine and
8 imprisonment."

9 Section 51. Section 50-1-6 NMSA 1978 (being Laws 1931,
10 Chapter 9, Section 12) is amended to read:

11 "50-1-6. FREE EMPLOYMENT AGENCY.--The [~~labor~~
12 ~~commissioner~~] labor relations division of the workforce
13 solutions department may, if deemed necessary, maintain and
14 operate a free employment agency for the purpose of supplying
15 labor to all branches of industry."

16 Section 52. Section 50-1-7 NMSA 1978 (being Laws 1931,
17 Chapter 9, Section 13, as amended) is amended to read:

18 "50-1-7. REPORTING VIOLATIONS OF LABOR AND INDUSTRIAL
19 LAWS.--~~[It is the duty of the director of the labor and~~
20 ~~industrial division of the labor]~~ The workforce solutions
21 department [~~to~~] shall report to the district attorney of the
22 district in which such violations occur, any violation of
23 labor and industrial laws of New Mexico [~~and~~]. It is the
24 duty of the district attorneys of the several districts, upon
25 the complaint of the [~~director~~] department, to prosecute all

.167549.1GR

underscored material = new
[bracketed material] = delete

1 violations of law [~~which may be~~] that are reported to the
2 district attorney by the [~~director~~] department."

3 Section 53. Section 50-4-9 NMSA 1978 (being Laws 1937,
4 Chapter 109, Section 9) is amended to read:

5 "50-4-9. RECORDS, SUBPOENAS, ETC.--

6 [~~(a)~~] A. Every employer shall keep a true and
7 accurate record of hours worked by and wages paid to each
8 employee. The employer shall keep [~~such~~] those records on
9 file for at least one year after the entry of the record.

10 [~~(b)~~] B. The labor [~~commissioner and his authorized~~
11 ~~representatives~~] relations division of the workforce
12 solutions department shall have the right at all reasonable
13 times to inspect [~~such~~] the records for the purpose of
14 ascertaining whether the provisions of [~~this act~~] Sections
15 50-4-1 through 50-4-12 NMSA 1978 are complied with.

16 [~~(c)~~] C. Any interference with the [~~labor~~
17 ~~commissioner or his authorized representatives~~] division in
18 the performance of [~~their~~] its duties shall be deemed a
19 violation of [~~this act~~] Sections 50-4-1 through 50-4-12 NMSA
20 1978 and punished as such.

21 [~~(d)~~] D. The [~~labor commissioner and his authorized~~
22 ~~representatives~~] division shall have the power to administer
23 oaths and examine witnesses under oath, issue subpoenas,
24 compel the attendance of witnesses and the production of
25 payroll records and take depositions and affidavits in any

.167549.1GR

underscored material = new
[bracketed material] = delete

1 proceedings before [~~said labor commissioner~~] the division.

2 [~~(e)~~] E. In case of failure of any person to comply
3 with any subpoena lawfully issued or upon the refusal of any
4 witness [~~or witnesses~~] to testify [~~upon~~] on any matter on
5 which [~~he or they~~] the witness may be lawfully interrogated,
6 the [~~labor commissioner~~] division may apply to the district
7 court in the proper county or to the judge [~~thereof~~] of the
8 county for a writ of attachment to compel [~~said~~] the witness
9 to respond to [~~said~~] the subpoena or to testify, as the case
10 may be."

11 Section 54. Section 50-4-11 NMSA 1978 (being Laws 1937,
12 Chapter 109, Section 12, as amended) is amended to read:

13 "50-4-11. WAGE CLAIMS--LIENS--ASSIGNMENT.--

14 A. The [~~labor commissioner shall have power and~~
15 ~~authority to~~] labor relations division of the workforce
16 solutions department may:

17 (1) take assignments of wage claims of
18 employees against employers [~~and shall also have power to~~];

19 (2) take assignments of liens upon real or
20 personal property securing the claims of employees and
21 laborers [~~and shall have power and authority to~~]; and

22 (3) prosecute actions for the collection of
23 [~~such~~] claims and for the foreclosure of liens of [~~such~~]
24 persons securing [~~such~~] the claims of persons who, in the
25 judgment of the [~~labor commissioner~~] division, are entitled

.167549.1GR

underscored material = new
[bracketed material] = delete

1 to the services of the [~~labor commissioner~~] division and who,
2 in [~~his~~] the division's judgment, have claims or liens or both
3 [~~which~~] that are valid and [~~enforceible~~] enforceable in the
4 courts.

5 B. In cases where the [~~commissioner~~] division has
6 taken assignments of labor claims [~~which~~] that are lienable
7 under the lien laws of [~~the state of~~] New Mexico, [~~he shall~~
8 ~~have power to~~] the division may join any number of claimants in
9 one statement of claim or lien and, in case of suit, [~~to~~] may
10 join any number of claimants in one cause of action."

11 Section 55. Section 50-4-12 NMSA 1978 (being Laws 1937,
12 Chapter 109, Section 13, as amended) is amended to read:

13 "50-4-12. WAGE CLAIM ACTIONS--COSTS--JURISDICTION--
14 REPRESENTATION BY DISTRICT ATTORNEY--APPEALS.--

15 A. In all actions brought by the [~~director of the~~
16 ~~labor and industrial~~] labor relations division of the [~~labor~~]
17 workforce solutions department as assignee under the provisions
18 of Section 50-4-11 NMSA 1978, the [~~director~~] division shall be
19 entitled to free process and shall not be obligated or required
20 to give any bond or other security for costs.

21 B. Any sheriff, constable or other officer requested
22 by the [~~director~~] division to serve any summons, writ,
23 complaint or order shall do so without requiring the [~~director~~]
24 division to pay any fees or furnish any security or bond.

25 C. Where all claims joined together do not exceed in

.167549.1GR

underscored material = new
[bracketed material] = delete

1 the aggregate the jurisdictional limit of the magistrate or
2 metropolitan court, the [~~director~~] division may institute an
3 action against the employer in any magistrate or metropolitan
4 court having jurisdiction without referring the claim to the
5 district attorney. In the event that during the course of the
6 proceedings representation by an attorney at law becomes
7 necessary or, in the [~~director's~~] division's judgment,
8 advisable, the [~~director~~] division shall so notify the district
9 attorney, and it shall then be the duty of the district
10 attorney or the district attorney's assistant to appear for the
11 [~~director~~] division in the cause.

12 D. In the event the cause is appealed by the
13 [~~director~~] division, no bond or other security shall be
14 required or fees charged the [~~director~~] division for court
15 costs or sheriff's fees in serving process."

16 Section 56. Section 50-4-16 NMSA 1978 (being Laws 1933,
17 Chapter 149, Section 6) is amended to read:

18 "50-4-16. TIME RECORDS--INSPECTION.--

19 A. Every employer to whom [~~this act applies~~] Sections
20 50-4-13 through 50-4-18 NMSA 1978 apply shall be required to
21 keep a time record showing the number of hours each [~~male~~]
22 employee worked each day.

23 B. [~~Such~~] The record shall be open at all reasonable
24 hours to the inspection of the [~~State labor commissioner, his~~
25 ~~agents or agent, record of which is required to be kept as~~

.167549.1GR

underscoring material = new
[bracketed material] = delete

1 ~~herein provided for]~~ labor relations division of the workforce
2 solutions department."

3 Section 57. Section 50-4-21 NMSA 1978 (being Laws 1955,
4 Chapter 200, Section 2, as amended) is amended to read:

5 "50-4-21. DEFINITIONS.--As used in the Minimum Wage Act:

6 A. "employ" includes suffer or permit to work;

7 B. "employer" includes any individual, partnership,
8 association, corporation, business trust, legal representative
9 or any organized group of persons employing one or more
10 employees at any one time, acting directly or indirectly in the
11 interest of an employer in relation to any employee, but shall
12 not include the United States, the state or any political
13 subdivision thereof; and

14 C. "employee" includes any individual employed by any
15 employer, but shall not include:

16 (1) any individual employed in domestic service
17 in or about a private home;

18 (2) any individual employed in a bona fide
19 executive, administrative or professional capacity and
20 [~~foremen~~] forepersons, superintendents and supervisors;

21 (3) any individual employed by the United States
22 or by the state or any political subdivision thereof;

23 (4) any individual engaged in the activities of
24 an educational, charitable, religious or nonprofit organization
25 where the employer-employee relationship does not, in fact,

.167549.1GR

underscoring material = new
[bracketed material] = delete

1 exist or where the services rendered to such organizations are
2 on a voluntary basis. The employer-employee relationship shall
3 not be deemed to exist with respect to any individual being
4 served for purposes of rehabilitation by a charitable or
5 nonprofit organization, notwithstanding the payment to the
6 individual of a stipend based upon the value of the work
7 performed by the individual;

8 (5) ~~[salesmen]~~ salespersons or employees
9 compensated upon piecework, flat rate schedules or commission
10 basis;

11 (6) students regularly enrolled in primary or
12 secondary schools working after school hours or on vacation;

13 (7) registered apprentices and learners
14 otherwise provided by law;

15 (8) persons eighteen years of age or under who
16 are not students in a primary, secondary, vocational or
17 training school;

18 (9) persons eighteen years of age or under who
19 are not graduates of a secondary school;

20 (10) persons employed by ambulance services;

21 (11) G.I. bill trainees while under training;

22 (12) seasonal employees of any employer
23 obtaining and holding a valid certificate issued annually by
24 the ~~[state labor commissioner]~~ labor relations division of the
25 workforce solutions department. The certificate shall state

.167549.1GR

underscoring material = new
[bracketed material] = delete

1 the job designations and total number of employees to be
2 exempted. In approving or disapproving an application for a
3 certificate of exemption, the [~~commissioner~~] division shall
4 consider the following:

5 (a) whether [~~such~~] the employment shall be
6 at an educational, charitable or religious youth camp or
7 retreat;

8 (b) that [~~such~~] the employment will be of a
9 temporary nature;

10 (c) that the individual will be furnished
11 [~~his~~] room and board in connection with [~~such~~] the employment,
12 or if the camp or retreat is a day camp or retreat, the
13 individual will be furnished board in connection with [~~such~~]
14 that employment;

15 (d) the purposes for which the camp or
16 retreat is operated;

17 (e) the job classifications for the
18 positions to be exempted; and

19 (f) any other factors that the
20 [~~commissioner~~] division deems necessary to consider;

21 (13) any employee employed in agriculture:

22 (a) if [~~such~~] the employee is employed by an
23 employer who did not, during any calendar quarter during the
24 preceding calendar year, use more than five hundred man-days of
25 agricultural labor;

.167549.1GR

underscored material = new
[bracketed material] = delete

1 (b) if [~~such~~] the employee is the parent,
2 spouse, child or other member of [~~his~~] the employer's immediate
3 family; for the purpose of this subsection, employer shall
4 include the principal stockholder of a family corporation;

5 (c) if [~~such~~] the employee: 1) is employed
6 as a hand-harvest laborer and is paid on a piece-rate basis in
7 an operation [~~which~~] that has been, and is customarily and
8 generally recognized as having been, paid on a piece-rate basis
9 in the region of employment; 2) commutes daily from [~~his~~] the
10 employee's permanent residence to the farm on which [~~he~~] the
11 employee is so employed; and 3) has been employed in
12 agriculture less than thirteen weeks during the preceding
13 calendar year;

14 (d) if [~~such~~] the employee, other than an
15 employee described in Subparagraph (c) of this paragraph: 1)
16 is sixteen years of age or under and is employed as a hand-
17 harvest laborer, is paid on a piece-rate basis in an operation
18 [~~which~~] that has been, and is generally recognized as having
19 been, paid on a piece-rate basis in the region of employment;
20 2) is employed on the same farm as [~~his~~] the employee's parent
21 or person standing in the place of [~~his~~] the parent; and 3) is
22 paid at the same piece-rate as employees over age sixteen are
23 paid on the same farm; or

24 (e) if [~~such~~] the employee is principally
25 engaged in the range production of livestock; or

.167549.1GR

underscored material = new
[bracketed material] = delete

1 (14) employees of charitable, religious or
2 nonprofit organizations who reside on the premises of group
3 homes operated by such charitable, religious or nonprofit
4 organizations for mentally retarded or emotionally or
5 developmentally disabled persons."

6 Section 58. Section 50-4-23 NMSA 1978 (being Laws 1967,
7 Chapter 242, Section 1) is amended to read:

8 "50-4-23. HANDICAPPED PERSONS--MINIMUM WAGE--[LABOR
9 COMMISSIONER] DIVISION POWERS AND DUTIES.--

10 A. The [~~state labor commissioner~~] labor relations
11 division of the workforce solutions department, to the extent
12 necessary in order to prevent curtailment of opportunities for
13 employment, shall, by [~~regulation~~] rule, provide for the
14 employment under special certificates of individuals, including
15 individuals employed in agriculture, whose earning or
16 productive capacity is impaired by physical or mental
17 deficiency or injury, at wages [~~which~~] that are lower than the
18 minimum wage applicable under Section [~~59-3-22 New Mexico~~
19 ~~Statutes Annotated, 1953 Compilation~~] 50-4-22 NMSA 1978, but
20 not less than fifty percent of [~~such~~] that wage.

21 B. The [~~state labor commissioner~~] division, pursuant
22 to [~~his regulations~~] rule, and upon certification of any state
23 agency administering or supervising the administration of
24 vocational rehabilitation services, may issue special
25 certificates [~~which~~] that allow the holder [~~thereof~~] of the

.167549.1GR

underscored material = new
[bracketed material] = delete

1 certificate to work at wages [~~which~~] that are less than those
2 required by Subsection A of this section and [~~which~~] that are
3 related to the workers' productivity, for the employment of:

4 (1) handicapped workers engaged in work [~~which~~]
5 that is incidental to training or evaluation programs; and

6 (2) multihandicapped individuals and other
7 individuals whose earning capacity is so severely impaired that
8 they are unable to engage in competitive employment.

9 C. The [~~state labor commissioner~~] division may, by
10 [~~regulation or order~~] rule, provide for the employment of
11 handicapped individuals in work activities centers under
12 special certificates at wages [~~which~~] that are less than the
13 minimums applicable under Section [~~59-2-22 New Mexico Statutes~~
14 ~~Annotated, 1953 Compilation~~] 50-4-22 NMSA 1978, or less than
15 that prescribed in Subsection A of this section, and [~~which~~]
16 that constitute equitable compensation for such individuals.

17 As used in this subsection, "work activities centers" means
18 centers planned and designed exclusively to provide therapeutic
19 activities for handicapped persons whose physical or mental
20 impairment is so severe as to make their productive capacity
21 inconsequential.

22 D. The state agency administering or supervising the
23 administration of vocational rehabilitation may issue a
24 temporary certificate for a period not to exceed ninety days
25 pursuant to Subsections A, B and C of this section and may

.167549.1GR

underscored material = new
[bracketed material] = delete

1 request an extension of the certification by the [~~state labor~~
2 ~~commissioner~~] division when it is determined that the severity
3 of disability of an individual or circumstances warrants an
4 extension of the certification."

5 Section 59. Section 50-4-25 NMSA 1978 (being Laws 1955,
6 Chapter 200, Section 4, as amended) is amended to read:

7 "50-4-25. POSTING OF SUMMARY OF THE ACT.--Every employer
8 subject to the Minimum Wage Act shall keep a summary of it,
9 furnished by the [~~labor commissioner~~] labor relations division
10 of the workforce solutions department without charge, posted in
11 a conspicuous place on or about the premises wherein any person
12 subject to the Minimum Wage Act is employed, and the summary
13 shall clearly and conspicuously set forth the current minimum
14 wage."

15 Section 60. Section 50-4-26 NMSA 1978 (being Laws 1955,
16 Chapter 200, Section 5, as amended) is amended to read:

17 "50-4-26. ENFORCEMENT--PENALTIES--EMPLOYEES' REMEDIES--

18 A. [~~Penalties:--(1)~~] Any employer who violates any of
19 the foregoing provisions [~~shall be deemed~~] is guilty of a
20 misdemeanor and shall be punished by a fine of not less than
21 twenty-five dollars [~~(\$25)~~] (\$25.00) or more than three hundred
22 dollars (\$300) or by imprisonment for not less than ten nor
23 more than ninety days or by both [~~such~~] a fine and
24 imprisonment.

25 [~~(2) It shall be the duty of the state labor~~

underscored material = new
[bracketed material] = delete

1 ~~commissioner to]~~

2 B. The labor relations division of the workforce
3 solutions department shall enforce and prosecute violations of
4 the Minimum Wage Act. The ~~[labor commissioner is hereby~~
5 ~~empowered to]~~ division may institute in the name of the state
6 ~~[of New Mexico]~~ an action in the district court of the county
7 wherein the employer who has failed to comply with the Minimum
8 Wage Act resides or has ~~[his]~~ a principal office or place of
9 business, for the purpose of prosecuting violations. ~~[It shall~~
10 ~~be the duty of]~~ The district attorney for the district wherein
11 any violation hereof occurs ~~[to]~~ shall aid and assist the
12 ~~[labor commissioner]~~ division in the prosecution ~~[thereof]~~ of
13 violations of the Minimum Wage Act.

14 ~~[B. Employees' remedies: (1)]~~

15 C. Any employer who violates any provision of Section
16 ~~[59-3-22 New Mexico Statutes Annotated, 1953 Compilation]~~ 50-4-
17 22 NMSA 1978 shall be liable to the employees affected in the
18 amount of their unpaid minimum wages, as the case may be, and
19 in an additional equal amount as liquidated damages.

20 ~~[(2)]~~ D. Action to recover ~~[such]~~ liability may be
21 maintained in any court of competent jurisdiction by any one or
22 more employees for and in behalf of ~~[himself or themselves]~~ the
23 employee or employees and for other employees similarly
24 situated, or ~~[such]~~ the employee or employees may designate an
25 agent or representative to maintain ~~[such]~~ the action before

.167549.1GR

underscored material = new
[bracketed material] = delete

1 and in behalf of all employees similarly situated.

2 E. The court in any action brought under [~~Paragraph~~
3 ~~(2)~~] Subsection D of this section shall, in addition to any
4 judgment awarded to the plaintiff or plaintiffs, allow costs of
5 the action and reasonable [~~attorneys'~~] attorney fees to be paid
6 by the defendant. In any proceedings brought pursuant to the
7 provisions of this section, the employee shall not be required
8 to pay any filing fee or other court costs necessarily incurred
9 in [~~such~~] the proceedings."

10 Section 61. Section 50-4-27 NMSA 1978 (being Laws 1967,
11 Chapter 188, Section 5) is amended to read:

12 "50-4-27. AUTHORITY OF [~~LABOR COMMISSIONER~~] DIVISION TO
13 PROMULGATE RULES--HEARING ON RULES--NOTICE--PUBLICATION.--The
14 [~~state labor commissioner~~] labor relations division of the
15 workforce solutions department shall have the authority to
16 promulgate and issue rules [~~and regulations~~] necessary to
17 administer and accomplish the purposes of the Minimum Wage Act.
18 [~~Such~~] The rules [~~and regulations~~] shall be adopted after
19 notice and public hearing. A copy of the notice of hearing
20 together with a copy of the proposed [~~regulations~~] rules shall
21 be [~~filed with the librarian of the supreme court library at~~
22 ~~least twenty days prior to the hearing. In addition, a copy of~~
23 ~~the notice of hearing shall be~~] sent to all known interested
24 persons. Any interested person shall have the right to appear
25 and present evidence."

.167549.1GR

underscored material = new
[bracketed material] = delete

1 Section 62. Section 50-6-7 NMSA 1978 (being Laws 1925,
2 Chapter 79, Section 8, as amended) is amended to read:

3 "50-6-7. LABOR PERMIT CERTIFICATES--ISSUANCE--AUTHORIZED
4 OFFICIALS--APPLICATION--CONTENTS--PROOF--COPIES--MAXIMUM
5 TERM.--

6 A. Permit certificates shall be issued only by the
7 school superintendents, school principals, designated issuing
8 school officers or the [~~director of the labor and industrial~~]
9 labor relations division of the [~~labor~~] workforce solutions
10 department [~~or the director's designee~~].

11 B. No permit certificate shall be issued to any child
12 until satisfactory proof has been furnished that the work in
13 which the child is to engage is not dangerous to the child nor
14 injurious to [~~his~~] the child's health or morals.

15 C. The application for the certificate [~~must~~] shall
16 show that the child is in good physical health and that the
17 work to be performed would not result in injury to the health,
18 morals or mental development of the child. Satisfactory proof
19 of the age of the child at the date of the application shall be
20 furnished. In the case of children over the age of fourteen
21 years and under the age of sixteen years, any application for
22 the employment of children at any gainful occupation during the
23 session hours of the school of the district in which the child
24 resides shall set forth, in addition to the foregoing, the
25 necessity to the family or the dependents of the child or for

.167549.1GR

underscored material = new
[bracketed material] = delete

1 ~~[his]~~ the child's own support of the income to be derived from
2 the employment or labor.

3 D. Whenever the ~~[person authorized to issue the labor~~
4 ~~permit]~~ division is satisfied that the provisions of this
5 section have been complied with, ~~[he]~~ the division shall issue
6 to the child a labor permit, keeping one copy on file and
7 sending one copy of ~~[this]~~ the permit to the labor and
8 industrial commission.

9 E. No permit certificate shall be in force without
10 renewal for a longer period than one year from the date of
11 issuance."

12 Section 63. Section 50-6-14 NMSA 1978 (being Laws 1925,
13 Chapter 79, Section 15, as amended) is amended to read:

14 "50-6-14. STATE CHILD LABOR INSPECTOR--APPOINTMENT--
15 DIRECTION--QUALIFICATIONS.--There shall be a "state child labor
16 inspector", appointed by and subject to the ~~[labor~~
17 ~~commissioner]~~ director of the labor relations division of the
18 workforce solutions department. The inspector must be
19 qualified by special training and experience ~~[for this work]~~
20 and must pass a satisfactory examination given by the ~~[labor~~
21 ~~commissioner]~~ division for this purpose."

22 Section 64. Section 50-7-3 NMSA 1978 (being Laws 1957,
23 Chapter 219, Section 3, as amended) is amended to read:

24 "50-7-3. APPRENTICESHIP COUNCIL.--An "apprenticeship
25 council", hereinafter referred to as the council, shall be

.167549.1GR

underscoring material = new
[bracketed material] = delete

1 appointed by the director of the labor [~~and industrial~~]
2 relations division of the workforce solutions department [~~of~~
3 ~~labor~~] without regard to any other provisions of law regarding
4 the appointment and compensation of employees of the state.
5 [~~It~~] The apprenticeship council shall consist of three persons
6 known to represent employers, three persons known to represent
7 labor organizations and three public representatives and shall
8 include, as ex-officio members without vote, the director of
9 the labor [~~and industrial~~] relations division or the director's
10 designee and the [~~state supervisor of trade and industrial~~]
11 director of the instructional support and vocational education
12 division of the public education department or the director's
13 designee. Persons appointed to the council [~~must~~] shall be
14 familiar with apprenticeable occupations. The terms of office
15 of the members of the council first appointed shall expire as
16 designated [~~by the director~~] at the time of [~~making the~~] their
17 appointment: one representative each of employers, labor
18 organizations and the public being appointed for one year; one
19 representative each of employers, labor organizations and the
20 public being appointed for two years and one representative
21 each of employers, labor organizations and the public being
22 appointed for three years. Thereafter, each member shall be
23 appointed for a term of three years. Any member appointed to
24 fill a vacancy occurring prior to the expiration of the term of
25 [~~his~~] the member's predecessor shall be appointed for the

.167549.1GR

underscored material = new
[bracketed material] = delete

1 remainder of that term. Members of the council not otherwise
2 compensated by public money shall be reimbursed for their
3 official duties in accordance with the Per Diem and Mileage Act
4 for attendance at not in excess of twelve meetings per year."

5 Section 65. Section 50-13-3 NMSA 1978 (being Laws 1997,
6 Chapter 237, Section 4) is amended to read:

7 "50-13-3. STATE DIRECTORY OF NEW HIRES.--

8 A. The human services department, acting as the
9 state's child support enforcement agency pursuant to Title IV-D
10 of the Social Security Act, shall, not later than October 1,
11 1997, establish an automated directory to be known as the state
12 directory of new hires, which shall contain information
13 supplied by employers on each newly hired or rehired employee.

14 B. The state directory of new hires shall use the
15 information received to locate individuals for purposes of
16 establishing paternity and establishing, modifying and
17 enforcing child support obligations and may disclose such
18 information to any agent of the state Title IV-D agency that is
19 under contract with the agency to carry out such purposes.

20 C. All employers and labor organizations doing
21 business in the state shall furnish to the state directory of
22 new hires a report that contains the name, address and the
23 social security number of each newly hired or rehired employee
24 and the name and address of and identifying number assigned
25 under Section 6109 of the Internal Revenue Code of 1986 to the

.167549.1GR

underscored material = new
[bracketed material] = delete

1 employer.

2 D. An employer in the state who also employs persons
3 in another state and who transmits reports magnetically or
4 electronically must designate one state in which the employer
5 has employees to which the employer will transmit the report.
6 Any employer who transmits reports pursuant to this [~~paragraph~~]
7 subsection shall notify the state directory of new hires in
8 writing as to which state such employer designates for the
9 purpose of sending reports.

10 E. Any department, agency or instrumentality of the
11 United States government shall comply with the provisions of
12 this section by transmitting the report described in Subsection
13 C of this section to the national directory of new hires.

14 F. Each employer and labor organization [~~as defined~~
15 ~~above~~] shall report to the state directory of new hires not
16 later than twenty days after the date the employer hires the
17 employee; or in the case of an employer transmitting reports
18 magnetically or electronically, by two monthly transmissions if
19 necessary not less than twelve days nor more than sixteen days
20 apart.

21 G. Each report shall be made on a W-4 form or, at the
22 option of the employer, an equivalent form and may be
23 transmitted by first class mail, magnetically or
24 electronically.

25 H. The [~~labor~~] workforce solutions department shall

.167549.1GR

underscoring material = new
[bracketed material] = delete

1 furnish to the state directory of new hires wage and claim
2 information as defined in Section 303(h)(3) of the Social
3 Security Act.

4 I. The human services department shall reimburse the
5 [~~labor~~] workforce solutions department for all costs incurred
6 in furnishing the information. The state directory of new
7 hires shall make available to state public assistance agencies
8 responsible for administering a program specified in Section
9 1137(b) of the Social Security Act information reported by
10 employers for purposes of verifying eligibility for the program
11 or investigating fraud.

12 J. The state directory of new hires shall make
13 available to the state agencies operating employment security
14 and workers' compensation programs access to information
15 reported by employers for the purposes of administering such
16 programs or investigating fraud."

17 Section 66. Section 50-14-2 NMSA 1978 (being Laws 1999,
18 Chapter 260, Section 2, as amended) is amended to read:

19 "50-14-2. DEFINITIONS.--As used in the Workforce
20 Development Act:

21 A. "board" means the state workforce development
22 board;

23 B. "chief elected official" means the chief elected
24 executive officer of a unit of general local government in a
25 local area and in a case in which a local area includes more

.167549.1GR

underscored material = new
[bracketed material] = delete

1 than one unit of general local government, "chief elected
2 official" means the person designated under the agreement
3 described in Section 117 (c)(1)(B) of the federal Workforce
4 Investment Act of 1998;

5 C. "employment training program" means a program or a
6 part of a program, regardless of which state or local agency
7 administers it, that has as its primary purpose assisting
8 persons in obtaining or enhancing employment;

9 D. "local board" means a local workforce development
10 board; and

11 E. "office" or "division" means the ~~[office of]~~
12 workforce ~~[training and development]~~ transition services
13 division of the workforce solutions department."

14 Section 67. Section 50-14-4 NMSA 1978 (being Laws 1999,
15 Chapter 260, Section 4, as amended) is amended to read:

16 "50-14-4. DUTIES OF THE BOARD.--

17 A. The board shall assist the governor in:

18 (1) developing a five-year state plan that shall
19 be updated annually and revised in accordance with the
20 requirements of the federal Workforce Investment Act of 1998;

21 (2) developing and improving the statewide
22 activities funded pursuant to the workforce investment system
23 and the one-stop delivery system, including development of
24 linkages to ensure coordination and nonduplication among the
25 programs and activities described in the federal Workforce

.167549.1GR

underscored material = new
[bracketed material] = delete

1 Investment Act of 1998;

2 (3) reviewing local plans;

3 (4) commenting annually on the measures taken
4 pursuant to Section 113(b)(14) of the federal Carl D. Perkins
5 Vocational and Applied Technology Education Act;

6 (5) developing allocation formulas for adult and
7 youth employment training program funds to local areas in
8 accordance with the federal Workforce Investment Act of 1998;

9 (6) developing comprehensive state performance
10 measures to assess the effectiveness of workforce investment
11 activities pursuant to the federal Workforce Investment Act of
12 1998;

13 (7) designating local workforce development
14 areas;

15 (8) developing the statewide employment
16 statistics system; and

17 (9) preparing reports and applications required
18 for submission to the federal government.

19 B. The board shall also:

20 (1) review, evaluate and report annually on the
21 performance of all workforce development activities
22 administered by state agencies involved with workforce
23 development;

24 (2) develop linkages with the public education
25 department and the ~~[commission on]~~ higher education department

.167549.1GR

underscored material = new
[bracketed material] = delete

1 to ensure coordination and nonduplication of vocational
2 education, apprenticeship, adult education, employment training
3 programs and vocational rehabilitation programs with other
4 workforce development and training programs; and

5 (3) provide policy advice regarding the
6 application of federal or state law that pertains to workforce
7 development.

8 C. To assist the board in fulfilling its duties, it
9 is authorized to establish committees, one of which shall be a
10 "coordination oversight committee". Except as provided for the
11 coordination oversight committee in Subsections D and E of this
12 section, the board shall appoint committee members and assign
13 duties to committees as the board deems appropriate. The chair
14 of the board shall appoint committee chairs from among members
15 of the board.

16 D. The coordination oversight committee shall consist
17 of the secretaries of economic development, human services,
18 [~~labor and~~] workforce solutions, public education and higher
19 education; a representative from community colleges; [~~a~~
20 ~~representative from the commission on higher education~~] a
21 representative of labor; two legislators from different
22 political parties, one from the senate and one from the house
23 of representatives; the director of the [~~office~~] division; and
24 the committee chair.

25 E. The duties of the coordination oversight committee

.167549.1GR

underscored material = new
[bracketed material] = delete

1 include the following:

2 (1) the secretaries of economic development,
3 [~~labor~~] workforce solutions and human services shall propose
4 five-, ten- and fifteen-year regional and statewide strategic
5 plans for employment growth and training in New Mexico for the
6 committee's consideration and possible recommendation for
7 approval to the board as part of the state plan;

8 (2) the [~~secretary~~] secretaries of public
9 education and [~~the representative from the commission on~~]
10 higher education shall propose appropriate education plans for
11 secondary education that address the strategic plans proposed
12 by the secretaries of economic development, human services and
13 [~~labor~~] workforce solutions for the committee's consideration
14 and possible recommendation for approval to the board as part
15 of the state plan;

16 (3) the committee's proposals to the board shall
17 facilitate a career pathways culture and, at a minimum, include
18 reference to foundation skills as developed by the United
19 States secretary of labor's commission on achieving necessary
20 skills, a job analysis that the economic development department
21 shall produce after consultation with incumbent workers and
22 employers, an available skills assessment and training targets;

23 (4) the board member from the community colleges
24 shall solicit input from the community college constituency and
25 work with regional and statewide businesses and other partners

.167549.1GR

underscored material = new
[bracketed material] = delete

1 and the economic development department to create career
2 pathways and align curriculum and facilitate plans with the
3 economic development department, human services department and
4 [~~labor~~] workforce solutions department strategic plans;

5 (5) the committee shall, after consultation with
6 the state chief information officer, develop and propose
7 strategies for coordination of information technology for the
8 purposes of providing participants access to all appropriate
9 state services; collecting and managing data to allow reporting
10 and analysis of uniform performance data related to all
11 appropriate employment training programs; and sharing and
12 integrating appropriate workforce data across agencies and
13 appropriate nongovernmental partners for identifying needs,
14 setting policy and coordinating strategies;

15 (6) the committee shall recommend for the
16 board's approval the coordination of program designs to avoid
17 duplication or unproductive segmentation of services; and

18 (7) the committee shall recommend for the
19 board's approval the coordination of state agency efforts to
20 progress toward comprehensive, customer-driven one-stop centers
21 through co-location of mandatory and recommended partner
22 service delivery points for workforce development.

23 F. All state agencies involved in workforce
24 development activities shall annually submit to the board for
25 its review and potential inclusion in the five-year plan their

.167549.1GR

underscored material = new
[bracketed material] = delete

1 goals, objectives and policies. The plan shall include
2 recommendations to the legislature on the modification,
3 consolidation, initiation or elimination of workforce training
4 and education programs in the state."

5 Section 68. Section 50-14-9 NMSA 1978 (being Laws 2005,
6 Chapter 111, Section 10) is amended to read:

7 "50-14-9. [~~OFFICE OF WORKFORCE TRAINING AND DEVELOPMENT--~~
8 ~~CREATION--DIRECTOR~~] WORKFORCE TRANSITION SERVICES DIVISION.--

9 A. The "[~~office of~~] workforce [~~training and~~
10 ~~development~~] transition services division" is created [~~as an~~
11 ~~agency administratively attached to the office of the governor~~]
12 in the workforce solutions department.

13 B. The [~~office~~] division shall be the recipient of
14 all grants from the United States pursuant to the federal
15 Workforce Investment Act of 1998 and shall disburse those
16 grants consistent with that act and the Workforce Development
17 Act.

18 C. The [~~office~~] division shall administer the
19 provisions of the Workforce Development Act and is the
20 governor's designee for the state with authority to administer
21 New Mexico's program pursuant to the federal Workforce
22 Investment Act of 1998. In performance of that duty and the
23 duties set forth in Section [~~11 of this 2005 act~~] 50-14-10 NMSA
24 1978, the [~~office~~] division has the general power to:

25 (1) sue and, subject to the provisions of the

.167549.1GR

underscored material = new
[bracketed material] = delete

1 Tort Claims Act, be sued;

2 (2) enter into contracts, joint powers
3 agreements and other contracts for workforce development
4 services and administer related programs with other state
5 agencies; local governments; state institutions of higher
6 learning; Indian nations, tribes or pueblos; regional provider
7 networks; and corporations authorized to do business in the
8 state;

9 (3) take administrative action by issuing orders
10 and instructions, not inconsistent with law, to ensure
11 implementation of and compliance with the provisions of law for
12 which the ~~[office]~~ division is responsible and to enforce those
13 orders and instructions by appropriate administrative actions
14 or actions in courts;

15 (4) promulgate, following the procedure in
16 Subsection E of Section 9-1-5 NMSA 1978, reasonable rules
17 necessary to carry out the duties of the ~~[office]~~ division; and

18 (5) take all other actions necessary to meet the
19 purposes of the Workforce Development Act.

20 ~~[D. The governor shall appoint, with the advice and
21 consent of the senate, a director of the office who shall be
22 the administrative head of the office and exempt from the
23 provisions of the Personnel Act.~~

24 ~~E. The director of the office may, within the limits
25 of available appropriations and pursuant to the provisions of~~

.167549.1GR

underscored material = new
[bracketed material] = delete

1 ~~the Personnel Act, employ such technical and administrative~~
2 ~~staff as are necessary to carry out the duties of the office.]"~~

3 Section 69. Section 50-14-10 NMSA 1978 (being Laws 2005,
4 Chapter 111, Section 11) is amended to read:

5 "50-14-10. [OFFICE] DIVISION--DUTIES--LIMITATIONS.--

6 A. The [office] division shall:

7 (1) provide technical, administrative and fiscal
8 agent support to the board;

9 (2) develop a unified, comprehensive plan for
10 streamlining and integrating employment training programs,
11 including the consolidation of all employment training
12 programs, into the [office] division. The [office] division
13 shall report annually to the governor and the legislature
14 generally the progress and effectiveness of the workforce
15 development system no later than September 1;

16 (3) develop a performance-based system of
17 accountability for employment training programs, including the
18 board, local boards, one-stop centers and training providers,
19 which system shall include key performance benchmarks to be
20 used to monitor and assess performance;

21 (4) monitor compliance with performance-based
22 and coordination standards, including such standards as the
23 [office] division establishes by rule, with approval of the
24 board, or that the board has adopted in the state plan, for the
25 state's employment training programs regardless of funding

.167549.1GR

underscored material = new
[bracketed material] = delete

1 source or the administrative agency that receives the funds.

2 In performing this duty, the [~~office~~] division:

3 (a) may issue subpoenas to appear and answer
4 questions or produce documents;

5 (b) may investigate substantial allegations
6 of improper financial or program activities;

7 (c) shall submit compliance reports to the
8 governor; and

9 (d) shall, with approval of the governor,
10 issue such corrective action orders as are necessary to enforce
11 compliance, including orders that suspend funding for
12 employment training programs or that transfer the programs to
13 another agency;

14 (5) promote the active participation and
15 partnership with community colleges wherever possible
16 throughout the state, which shall include the use of community
17 colleges in creating career pathways and the use of available
18 partnership incentives with local boards to use community
19 college facilities for one-stop locations, co-location
20 opportunities and specifically designed training programs; and

21 (6) provide oversight and technical support for
22 local boards to assist them in achieving independence and
23 meeting performance standards while implementing statewide
24 goals and directions.

25 B. The [~~office~~] division shall not compete for a

.167549.1GR

underscoring material = new
[bracketed material] = delete

1 contract to provide one-stop services, act as a one-stop
2 operator, accept revenues for one-stop contractor services for
3 a local area of the state or receive funding from residual set-
4 aside funds other than for usual and customary [~~office~~]
5 division activities; provided, however, that the [~~office~~]
6 division may, in its discretion and consistent with the state
7 plan, promote and fund the establishment of all required and
8 allowable statewide investment activities consistent with
9 Section 134 of the federal Workforce Investment Act of 1998 and
10 in cooperation with local boards.

11 [~~C. Nothing in the Workforce Development Act shall be~~
12 ~~construed to provide the office with authority to administer~~
13 ~~the unemployment compensation program, programs under 29 U.S.C.~~
14 ~~Sections 49 through 49c or a program currently administered by~~
15 ~~the labor department.]"~~

16 Section 70. Section 50-14-12 NMSA 1978 (being Laws 2005,
17 Chapter 111, Section 13) is amended to read:

18 "50-14-12. COOPERATION WITH FEDERAL GOVERNMENT--AGENCY
19 DESIGNATION.--

20 A. The [~~office~~] division may cooperate with the
21 federal government in the administration of employment training
22 and public assistance programs in which financial or other
23 participation by the federal government is authorized or
24 mandated under federal laws, rules or orders.

25 B. The [~~office~~] division, on behalf of the governor,

.167549.1GR

underscored material = new
[bracketed material] = delete

1 may enter into agreements with agencies of the federal
2 government to implement employment training and public
3 assistance programs subject to availability of appropriated
4 state funds and any provisions of state laws applicable to the
5 agreements or participation by the state.

6 C. The governor may designate the [~~office or any~~
7 ~~agency~~] division as the single state agency for the
8 administration of an employment training program, either by the
9 governor's own discretion or when the designation is a
10 condition of federal financial or other participation in the
11 program under applicable federal law, rule or order; provided,
12 however, that no designation of a single state agency under the
13 authority granted in this section shall be made in
14 contravention of state law."

15 Section 71. Section 50-15-2 NMSA 1978 (being Laws 2005,
16 Chapter 257, Section 2) is amended to read:

17 "50-15-2. DEFINITIONS.--As used in the Day Laborer Act:

18 A. "check cashing service" means a business that for
19 a fee offers to cash checks or other payment instruments or
20 that advertises that it cashes checks or other payment
21 instruments;

22 B. "day labor" means employment that is under a
23 contract between a day labor service agency and a third-party
24 employer, that is occasional or irregular and that is for a
25 limited time period;

.167549.1GR

underscored material = new
[bracketed material] = delete

1 C. "day labor service agency" means an entity,
2 including a labor broker or labor pool, that provides day
3 laborers to third-party employers and that charges the third-
4 party employer for the service of providing day laborers for
5 employment offered by the employer;

6 D. "day laborer" means a person who contracts for day
7 labor employment with a day labor service agency;

8 E. "department" means the [~~labor~~] workforce solutions
9 department;

10 F. "office worker" means a person employed to perform
11 clerical, secretarial or other semiskilled or skilled work that
12 is predominantly performed in an office setting;

13 G. "payment instrument" means a paycheck, payment
14 voucher or other negotiable instrument from an employer
15 provided to an employee to pay for hours worked; and

16 H. "third-party employer" means a person that
17 contracts with a day labor service agency for the employment of
18 day laborers."

19 Section 72. Section 51-1-2 NMSA 1978 (being Laws 1979,
20 Chapter 280, Section 11, as amended) is amended to read:

21 "51-1-2. DEFINITIONS.--As used in the Unemployment
22 Compensation Law:

23 A. "department" means the [~~labor~~] workforce solutions
24 department;

25 B. "division" means the [~~employment security~~]

.167549.1GR

underscoring material = new
[bracketed material] = delete

1 workforce transition services division of the [~~labor~~]
2 department, the director of the division or an employee of the
3 division exercising authority lawfully delegated to the
4 employee by the director; and

5 C. "secretary" means the secretary of [~~labor~~]
6 workforce solutions or an employee of the department exercising
7 authority lawfully delegated to the employee by the secretary."

8 Section 73. Section 52-1-41 NMSA 1978 (being Laws 1959,
9 Chapter 67, Section 20, as amended) is amended to read:

10 "52-1-41. COMPENSATION BENEFITS--TOTAL DISABILITY.--

11 A. For total disability, the worker shall receive,
12 during the period of that disability, sixty-six and two-thirds
13 percent of [~~his~~] the worker's average weekly wage, and not to
14 exceed a maximum compensation of eighty-five percent of the
15 average weekly wage in the state, a week, effective July 1,
16 1987 through December 31, 1999, and thereafter not to exceed a
17 maximum compensation of one hundred percent of the average
18 weekly wage in the state, a week; and to be not less than a
19 minimum compensation of thirty-six dollars (\$36.00) a week.
20 Except as provided in Subsections B and C of this section, the
21 worker shall receive compensation benefits for the remainder of
22 [~~his~~] the worker's life.

23 B. For disability resulting from primary mental
24 impairment, the maximum period of compensation is one hundred
25 weeks. For disability resulting in secondary mental

.167549.1GR

underscored material = new
[bracketed material] = delete

1 impairment, the maximum period of compensation is the maximum
2 period allowable for the disability produced by the physical
3 impairment or one hundred weeks, whichever is greater.

4 C. For the purpose of paying compensation benefits
5 for death, pursuant to Section 52-1-46 NMSA 1978, the worker's
6 maximum disability recovery shall be deemed to be seven hundred
7 weeks.

8 D. Where the worker's average weekly wage is less
9 than thirty-six dollars (\$36.00) a week, the compensation to be
10 paid the worker shall be [~~his~~] the worker's full weekly wage.

11 E. For the purpose of the Workers' Compensation Act,
12 the average weekly wage in the state shall be determined by the
13 [~~employment security division of the labor~~] workforce solutions
14 department on or before June 30 of each year and shall be
15 computed from all wages reported to the [~~employment security~~
16 ~~division~~] department from employing units, including
17 reimbursable employers, in accordance with the [~~regulations~~]
18 rules of the [~~division~~] department for the preceding calendar
19 year, divided by the total number of covered employees divided
20 by fifty-two.

21 F. The average weekly wage in the state, determined
22 as provided in Subsection E of this section, shall be
23 applicable for the full period during which compensation is
24 payable when the date of the occurrence of an accidental injury
25 falls within the calendar year commencing January 1 following

.167549.1GR

underscored material = new
[bracketed material] = delete

1 the June 30 determination.

2 G. Unless the computation provided for in Subsection
3 E of this section results in an increase or decrease of two
4 dollars (\$2.00) or more, raised to the next whole dollar, the
5 statewide average weekly wage determination shall not be
6 changed for any calendar year."

7 Section 74. Section 52-3-18 NMSA 1978 (being Laws 1965,
8 Chapter 299, Section 5, as amended) is amended to read:

9 "52-3-18. DETERMINATION BY WORKERS' COMPENSATION
10 [~~DIVISION OF THE LABOR DEPARTMENT~~] ADMINISTRATION.--All issues
11 of fact or law arising under the New Mexico Occupational
12 Disease Disablement Law shall be determined by the workers'
13 compensation [~~division of the labor department~~] administration
14 pursuant to the provisions of Chapter 52 NMSA 1978."

15 Section 75. Section 52-3-59 NMSA 1978 (being Laws 1975,
16 Chapter 268, Section 5, as amended) is amended to read:

17 "52-3-59. RECIPROCAL RECOGNITION OF EXTRA-TERRITORIAL
18 COVERAGE WITH OTHER JURISDICTIONS.--For the purpose of
19 effecting mutually satisfactory reciprocal arrangements with
20 other states respecting extra-territorial jurisdictions, the
21 [~~employment security division of the labor department~~] workers'
22 compensation administration is empowered to promulgate special
23 and general [~~regulations~~] rules not inconsistent with the
24 provisions of the New Mexico Occupational Disease Disablement
25 Law and, with the approval of the governor, to enter into

.167549.1GR

underscored material = new
[bracketed material] = delete

1 reciprocal agreements with appropriate boards, commissions,
2 officers or agencies of other states having jurisdiction over
3 workers' compensation claims."

4 Section 76. Section 52-5-3 NMSA 1978 (being Laws 1986,
5 Chapter 22, Section 29, as amended) is amended to read:

6 "52-5-3. REPORTS--DATA GATHERING.--

7 A. The intent of this section is to allow the
8 director to gather data and conduct studies to evaluate the
9 workers' compensation and occupational disease disablement
10 system in New Mexico. This includes evaluating the benefits
11 structure and the costs incurred under each version of the
12 Workers' Compensation Act and the New Mexico Occupational
13 Disease Disablement Law. To this end, the director shall
14 establish baseline data against which to assess the changes in
15 the law.

16 B. The director shall independently evaluate
17 insurance industry data pertaining to workers' compensation and
18 occupational disease disablement claims and payments, as well
19 as other information the director believes to be necessary and
20 relevant to a thorough evaluation of the system's
21 effectiveness. In addition to data generated by insurance
22 industry representatives and organizations, the director shall
23 collect data from employers, claimants and other relevant
24 parties.

25 C. Unless otherwise provided by law, the director

.167549.1GR

underscoring material = new
[bracketed material] = delete

1 shall have access to insurance industry information that
2 contains workers' compensation and occupational disease
3 disablement claim data as the director determines is necessary
4 to carry out the provisions of this section.

5 D. The director shall have access to files and
6 records of:

7 (1) the [~~labor~~] workforce solutions department
8 that pertain to:

9 (a) the name and number of employees
10 reported by employers;

11 (b) employers' mailing addresses;

12 (c) federal identification numbers; and

13 (d) general wage information;

14 (2) the insurance division of the public
15 regulation commission that pertain to:

16 (a) historical insurance classification
17 rates and total premiums paid during given periods of time;

18 (b) insurers licensed to underwrite casualty
19 insurance; and

20 (c) records of group self-insurers;

21 (3) the human services department that include
22 names, addresses and other identifying information of
23 recipients of benefits and services pertaining to income
24 support;

25 (4) the taxation and revenue department that

.167549.1GR

underscoring material = new
[bracketed material] = delete

1 identify employers paying workers' compensation assessments in
2 accordance with Section 52-5-19 NMSA 1978; and

3 (5) the motor vehicle division of the taxation
4 and revenue department that pertain to the identity of licensed
5 drivers and the ownership of motor vehicles.

6 E. Information that is confidential under state law
7 shall be accessible to the director and shall remain
8 confidential.

9 F. The director shall prepare an annual report. [He]
10 The director shall publish in that report and in other reports
11 as [he] the director deems appropriate such statistical and
12 informational reports and analyses based on reports and records
13 available as, in [his] the director's opinion, will be useful
14 in increasing public understanding of the purposes,
15 effectiveness, costs, coverage and administrative procedures of
16 workers' compensation and in providing basic information
17 regarding the occurrence and sources of work injuries or
18 disablements to public and private agencies engaged in
19 industrial injury prevention activities. The reports shall
20 include information concerning the nature and frequency of
21 injuries and occupational diseases sustained and the resulting
22 benefits, costs and other factors that are important to
23 furthering the intent of this section."

24 Section 77. Section 60-13-3.1 NMSA 1978 (being Laws 2005,
25 Chapter 94, Section 1) is amended to read:

.167549.1GR

underscoring material = new
[bracketed material] = delete

1 "60-13-3.1. EMPLOYER AND EMPLOYEE RELATIONSHIP--
2 INDEPENDENT CONTRACTOR--IMPROPER REPORTING--PENALTY--LICENSE
3 SANCTIONS.--

4 A. Except as provided in Subsection D of this
5 section, for purposes of the employer and employee relationship
6 within those construction industries subject to the
7 Construction Industries Licensing Act, a contractor who is an
8 employer shall consider a person providing labor or services to
9 the contractor for compensation to be an employee of the
10 contractor and not an independent contractor unless the
11 following standards indicative of an independent contractor are
12 met:

13 (1) the person providing labor or services is
14 free from direction and control over the means and manner of
15 providing the labor or services, subject only to the right of
16 the person for whom the labor or services are provided to
17 specify the desired results;

18 (2) the person providing labor or services is
19 responsible for obtaining business registrations or licenses
20 required by state law or local ordinance for the person to
21 provide the labor or services;

22 (3) the person providing labor or services
23 furnishes the tools or equipment necessary to provide the labor
24 or services;

25 (4) the person providing labor or services has

.167549.1GR

underscored material = new
[bracketed material] = delete

1 the authority to hire and fire employees to perform the labor
2 or services;

3 (5) payment for labor or services is made upon
4 completion of the performance of specific portions of a project
5 or is made on the basis of a periodic retainer; and

6 (6) the person providing labor or services
7 represents to the public that the labor or services are to be
8 provided by an independently established business. A person is
9 engaged in an independently established business when four or
10 more of the following circumstances exist:

11 (a) labor or services are primarily
12 performed at a location separate from the person's residence or
13 in a specific portion of the residence that is set aside for
14 performing labor or services;

15 (b) commercial advertising or business cards
16 are purchased by the person, or the person is a member of a
17 trade or professional association;

18 (c) telephone or email listings used for the
19 labor or services are different from the person's personal
20 listings;

21 (d) labor or services are performed only
22 pursuant to a written contract;

23 (e) labor or services are performed for two
24 or more persons within a period of one year; or

25 (f) the person assumes financial

.167549.1GR

underscoring material = new
[bracketed material] = delete

1 responsibility for errors and omissions in labor or services as
2 evidenced by insurance, performance bonds and warranties
3 relating to the labor or services being provided.

4 B. The [~~labor~~] workforce solutions department shall
5 administer and enforce the provisions of Subsection A of this
6 section, including coordination with the construction
7 industries division of the regulation and licensing department.

8 C. A contractor who intentionally and willfully
9 reports to a state agency or other client that an employee is
10 an independent contractor or who, for the purposes of a program
11 administered by a state agency, intentionally and willfully
12 treats or otherwise lists an employee as an independent
13 contractor when the employee's status does not meet the
14 standards indicative of an independent contractor as identified
15 in Subsection A of this section is guilty of a misdemeanor and
16 shall be punished by a fine of not more than five thousand
17 dollars (\$5,000) or by imprisonment for a definite term not to
18 exceed six months or both. For the purposes of this
19 subsection, "state agency" means an administration, board,
20 commission, department or division of this state.

21 D. Conviction of a contractor for violating
22 Subsection C of this section shall be grounds for the
23 construction industries commission to take action to suspend,
24 revoke or refuse to renew a license issued to that contractor
25 by the construction industries division of the regulation and

.167549.1GR

underscored material = new
[bracketed material] = delete

1 licensing department.

2 E. Subsections A, B and C of this section shall not
3 be construed to affect or apply to a common law or statutory
4 action providing for recovery in torts and shall not be
5 construed to affect or change the common law interpretation of
6 independent contractor status as it relates to tort liability."

7 Section 78. TEMPORARY PROVISIONS--TRANSFERS.--

8 A. On July 1, 2007, all functions, personnel,
9 appropriations, money, buildings, files, records, furniture,
10 equipment and other property of the labor department, including
11 any divisions of the department, are transferred to the
12 workforce solutions department.

13 B. On July 1, 2007, all functions, personnel,
14 appropriations, money, files, records, furniture, equipment and
15 other property of the office of workforce training and
16 development are transferred to the workforce solutions
17 department.

18 C. On July 1, 2007, all contractual obligations of
19 the labor department, including any divisions of the
20 department, are transferred to the workforce solutions
21 department.

22 D. On July 1, 2007, all contractual obligations of
23 the office of workforce training and development are
24 transferred to the workforce solutions department.

25 E. On July 1, 2007, all statutory references to the

.167549.1GR

underscoring material = new
[bracketed material] = delete

1 labor department or any divisions of the labor department shall
2 be deemed to be references to the workforce solutions
3 department.

4 F. On July 1, 2007, all statutory references to the
5 office of workforce training and development shall be deemed to
6 be references to the workforce solutions department.

7 Section 79. REPEAL.--Sections 9-18-1 through 9-18-15,
8 50-1-1.5, 50-1-9, 50-6-15 and 50-14-16 NMSA 1978 (being Laws
9 1987, Chapter 342, Sections 1 through 14, Laws 1993, Chapter
10 16, Section 2, Laws 1979, Chapter 204, Section 8, Laws 1987,
11 Chapter 333, Section 2, Laws 1963, Chapter 175, Section 4 and
12 Laws 2005, Chapter 111, Section 25, as amended) are repealed.

13 Section 80. EFFECTIVE DATE.--The effective date of the
14 provisions of this act is July 1, 2007.